



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISCELLANEOUS CIVIL APPLICATION NO.E161 OF 2018

MESHACK OCHIENG T/A MECKO ENTERPRISE.....APPLICANT

-VERSUS-

THE HON. ATTORNEY GENERAL.....RESPONDENT

RULING

1. This ruling is in respect to the applicant's application dated 26th November 2019 wherein the applicant herein, **Mr. Meshack Ochieng** who acts in person seeks orders for "summary judgment in view of the skeleton submissions dated 25th November 2019 for prayers sought to be granted in the matter of Arbitration Act Clause 40(9) wherein the court is bound by the Appeal Court declaration on the orders granted in the application dated 21st November 2019":-

"That no any other appeal or hearing in any court in regards to this suit shall be entitled to proceed and that the applicant herein is entitled to pursue and enforce the decree on claims as per the consent dated 17th June 2016 which was adopted as an order of court of appeal dated 20th June 2016.

That this honourable does adhere and give heed to the judgment of the HONOURABLE LADY JUSTICE M.W. MUIGAI delivered in the 14th April,2019(see page 10 of the said judgment)

My ladyship, my humble prayer is that this honourable court be pleased to compel the Honourable Attorney General to advise the Permanent Secretary of the Ministry of education to release the payment of Kshs 52,939,270.85 to the applicant as per the certificate of the order against the government dated 24th June, 2019."

2. The respondent opposed the application through the Notice of preliminary objection filed on 20th January 2020 wherein it sets out the following grounds of objection:-

1. That the applicant was declared a vexatious litigant under the Vexatious Proceedings Act following the judgment of the Honourable Lady Justice Muigai J of 14th April 2019.

2. That pursuant to the said judgment of the Honourable Lady Justice Muigai and in line with the provisions of the Vexatious Proceedings Act, the applicant was barred to file any suit or otherwise proceed with any existing suit specifically the present suit unless with leave of the honourable court.

3. That in filing the present Notice of Motion application dated 26th November 2019, the applicant has not sought and been granted the requisite leave of the Honourable court to proceed with the present suit.

4. That in the absence of the leave of court to file and proceed with the present action, the said Notice of Motion application dated 26th November 2019 in contempt of the orders of the Honourable Lady Justice Mungai and contrary to the Vexatious Proceedings Act and as such an abuse of the process of court.

3. At the hearing of the application **Mr. Kihara**, learned counsel for the respondent submitted that the plaintiff/applicant herein, having been declared a vexatious litigant through the courts order of 14th April 2019 was required to seek and obtain the leave of the court before filing any matter before the court.

4. Counsel noted that the application dated 26th November 2019 was filed without the leave of the court. He urged the court to find that the applicant is in contempt of the court order and should therefore be denied audience unless he purges the contempt.

5. In a rejoinder to the preliminary objection the applicant submitted that he obtained the leave of the court on 11th October 2019.

6. The main issue for determination is whether having been declared vexatious litigant through the court order of 14th April 2019, the applicant sought and obtained the leave of the court before filing the instant application.

7. I have perused the ruling made by Justice M. W. Muigai in Miscellaneous Application No. 167 of 2018 pitting the applicant herein and the defendant. In the said matter, the respondent herein sought orders to declare the applicant herein (then the respondent) a vexatious litigant under Vexatious Proceedings Act and to restrain him from instituting further proceedings without the leave of the court.

8. Upon considering, at length, the issue of whether the applicant is a vexatious litigant, Muigai J. rendered herself in part, as follows over the said subject:

“Despite the above legal considerations, the Respondent filed various suits in different Courts and numerous applications in pursuit of the same question of interest.

In the instant Court file the Respondent filed following documents;

2/5/2018- End of Litigation to Full Execution of Appeals

11/6/2018-List of Authorities

30/5/2018-Submissions with Authorities

6/11/2018-Submissions on Judicial Restraint

31/10/2018-Judicial letter

15/11/2018-Affidavit High Lighting Submissions

12/11/2018-Supplementary Affidavit

14/1/2019-Notice of Motion of 14/1/2019

7/2/2019-Supplementary Affidavit

16/1/2019-High lights to be relied on in Miscellaneous Applications

5/3/2019-Affidavit of Evidence for Court File 161 of 2018

2/2/2019-Respondent’s Grounds of Opposition of 20/2/2019

6/3/2019-Respondent’s Preliminary Objection

11/3/2019- Respondent’s case dated 11/3/2019

20/3/2019- Respondent’s Submissions

12/3/2019-Respondent’s Further Affidavit

25/3/2019-Respondent/Applicant’s Affidavit

All these pleadings have been filed by the Respondent Applicant without leave of the Court and could not possibly elicit a response from the Applicant. The substantive application and reply possibly further and Supplementary Affidavit(s) ought to suffice. So that when pleadings close the matter is heard on merit and determined. In the instant case it is not possible to decipher the content of all these documents and their import to the substantive application. Naturally and legally these numerous filings and service vex the Applicant. The Applicant has to contend with receiving and reading through massive documents, reply and serve the Respondent and move from Court to Court on the same/identical issue without reasonable grounds. This is because various Courts as shown above have determined the issue of interest. No Court can legally overturn another Court’s decision except in formal application of review or legal grounds to set aside judgment as the Courts are of equal and competent jurisdiction. The Respondent ought to appeal the decisions in Court Appeal. In the absence of which it would be contrary to Law to ventilate the same issue in successive cases in the High Court. For these reasons, this Court finds the Applicant’s application has merit.

A vexatious litigant has been defined in the case of *Camerado Insurance Agency v Superior Court of Sacramento County CV525328 (STOLZ) (1993)* as a person who does any of the following:

a) In the immediately preceding seven year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been;

- **Finally determined adversely to the person or**
- **Unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing**

b) After litigation has been finally determined against the person, he/she repeatedly re-litigates or attempts to re-litigate in propria persona either:

i) The validity of the determination against the same defendant as to whom the litigation was finally determined or

ii) The cause of caution, claim or controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant

c) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery or engages in other tactics that are frivolous

This is court observed that the Respondent is representing himself without guidance of an advocate and he is out to seek relief from various avenues that the law provides. **Article 48 COK 2010** grants every citizen the right to access to justice, **Article 50 COK 2010** grants every person the right to a fair hearing and **Article 159 COK 2010** which provides that in exercising judicial authority, the courts and tribunals shall be guided by the following principles:-

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted.

However, although the Respondent is entitled like every person to these rights under **COK 2010, Section 7 CPR 2010**, curtails multiplication of suits and pleadings on the same/identical issue. Therefore, the Respondent is estopped from filing any pleading or suit in any Court in the High Court on the issue of interest emanating from the **Arbitral Award** of 30th September 2013 without leave of the Court.

To aid the Respondent there is pending for determination same matter in **HCCC 161 2018**. In terms of **Section 1A of CPA** that provides for **just, expeditious, proportionate and affordable resolution of this matter**, this court shall have this file placed before the Trial Court in **HCCC161 of 2018** and all pleadings going forward shall be filed with leave of the Trial Court **HCCC161 of 2018**. **No other suit in any other Court shall be filed by the Respondent on the current issue in any Court within High Court without leave of the Trial Court in HCCC161 of 2018."**

9. Having regard to the above extract of the ruling by Justice Muigai, I find that it is not in doubt that the applicant herein was found and declared to be a vexatious litigant after which the court directed that he was not to file any other suit in any other court without the leave of this court.

10. Following the said ruling by Muigai J. this matter was on 30th May 2019 consolidated with Miscellaneous 167/2018 and fixed for hearing on 19th September 2019. However, hardly had the ink dried on the orders of 30th May 2019 than the applicant herein filed another application dated 15th July 2019 and yet another application dated 20th June 2019 seeking to withdraw an earlier application dated 26th November 2018.

11. When the matter came up for mention on 23rd July 2019, the respondent's counsel urged the court to warn the applicant to desist from filing more applications in the matter and await the hearing slated for 19th September 2019.

12. On 30th July 2019, the applicant herein filed yet another application followed by another certificate of urgency dated 21st November 2019 and later the instant application dated 26th November 2019.

13. I have carefully perused the proceedings in this matter and I note that even though the applicant claims that he on 11th October 2019 obtained the leave of the court to file the instant application, no such leave granted by this court on the said date or at all.

14. My finding is that the order of Justice Muigai of 14th April 2019 is clear and self explanatory. The applicant was required to seek and obtain the leave of this court before filing any other application over the same subject matter.

15. Section 3 of Vexatious Proceedings Act stipulates as follows:

“No suit shall, except with leave of the High Court or of a judge thereof, be instituted by or on behalf of a vexatious litigant in any Court, and such leave shall not be given unless the Court or the judge is satisfied that the suit is not an abuse of the process of the court and that there is a prima facie ground for the suit.”

16. In the present case, it is clear that the applicant herein is on a mission to file numerous applications over the same matter without the leave of the court despite having been declared a vexatious litigant and even when a hearing date has already been taken for the substantive hearing of the dispute.

17. Looking at the kind of pleadings and applications that have been filed by the applicant in this matter, one cannot help but I find that the applicant is on an application filing spree in total disregard to the court’s orders that found him to be a vexatious litigant.

18. In sum, I find that the instant application dated 26th November 2019, having been filed by the applicant without the court’s leave, is incompetent. I therefore uphold the respondent’s preliminary objection dated 16th January 2020 and strike out the application dated 26th November 2019 with costs to the respondent.

Dated, signed and delivered in open court at Nairobi this 23rd day of April 2020 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of:

Applicant present.

C/A & DR – Hon. Tanui