



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO 440 OF 2011

FORMERLY NAKURU HCCC NO 299 OF 2009

FORMERLY NAKURU HCCC 1227 OF 1996

FORMERLY NAKURU HCCC 125 /93 AND NAKURU 132/93

EDWARD KINGS ONYANCHA MAINA T/A MATRA INTERNATIONAL

ASSOCIATES.....PLAINTIFF

VERSUS

CHINA JIANGSU CORPORATION.....1ST DEFENDANT

JAMES OCHIENG ODUOL.....2ND DEFENDANT

RPV WENDOH.....3RD DEFENDANT

JOSEPH NYAMU.....4TH DEFENDANT

MARY G. MUGO.....5TH DEFENDANT

K.H. RAWAL.....6TH DEFENDANT

JOHN PHILIP RANSLEY.....7TH DEFENDANT

HON. CHIEF JUSTICE.....8TH DEFENDANT

THE ATTORNEY GENERAL.....9TH DEFENDANT

RULING (2)

1. In his Notice of Motion dated 29th January 2016 and filed on 1st February 2016, the Plaintiff herein sought for prayers:-

1. THAT the Ruling of 28th January 2016 be nullified and voided forthwith *ab initio*.

2. THAT the Warrants of Attachment to issue forthwith in execution of payment of the amount of Kshs 42,659,438 pursuant to the Notice to Show Cause why Execution should not issue issued on 22nd December 2015.

3. THAT costs incidental to the application be condemned upon the 2nd Defendant on a higher scale.

2. In his Supporting Affidavit that was sworn on 29th February 2016, he attached copies of Rulings by Alouch J of 30th April 1998, five (5) NTSCs, one which was duplicated, demanding payment of Kshs 6,193,499.50, Kshs 5,840,912.50, 5,849,070/= and Kshs 6,122,171/=. They were dated 12th November 2017, 20th August 2011, 10th September 2015 and 22nd December 2015. On 21st January 2016, Hon DR Wangila stayed the NTSC pending the hearing and determination of the Plaintiff's Notice of Motion application dated 26th October 2015.

3. In opposition to the said application, on 7th March 2016, the 1st and 2nd Defendants filed Grounds of Opposition dated 1st March 2016. Their grounds were that:-

a. THAT there was no judgment, decree or order that could be executed or warranting necessitating the payment of Kshs 42,659,438/=.

b. THAT the Plaintiff had never appealed the Ruling of Odunga J delivered on 17th January 2013 in which he declared whatever judgment, decree or order the Plaintiff may have obtained as illegal, null and void.

c. THAT the Ruling of Mabeya J of 31st July 2015 that the Warrants of Attachment could not be enforced in these proceedings had not been appealed against and/or set aside by the Court of Appeal or any other court.

d. THAT Hon DR Wangila stayed the NTSC pending the hearing and determination of the Plaintiff's Notice of Motion application dated and filed on 26th October 2015.

4. On their part, the 3rd to 9th Defendants filed their Grounds of Opposition dated 23rd September 2019 on 24th September 2019. Their grounds of opposition were that :-

a. THAT granting the orders would violate the doctrine of precedence.

b. THAT the application was improper and could not be granted.

c. THAT the application was an abuse of the court process and ought to be dismissed.

5. Notably, the hearing of the NTSC was stayed pending the hearing and determination of the Plaintiff's Notice of Application dated and filed on 26th October 2015, which this very court had established that there was no judgment and/or decree that was capable to being executed as the interlocutory judgment that had been entered against the Defendants herein was set aside by Odunga J in his Ruling of 17th January 2016.

6. Bearing in mind that this court found and held in its Ruling No (1) of 30th July 2020 that there was no judgment herein, the Plaintiff could not therefore purport to prosecute his NTSC. The decision of this court will thus guide the DR dealing with the NTSC accordingly.

DISPOSITION

7. For the foregoing reasons, the upshot of this court's decision was that the Plaintiff's Notice of Motion application dated 29th January 2016 and filed on 1st February 2016 was not merited and the same is hereby dismissed with costs to the 1st and 2nd Defendants herein. Costs will not be awarded to the 3rd to 9th Defendants as they are State Officers being represented by the 9th Defendant herein.

8. However, to avoid numerous applications being filed against them as well as against the 1st and 2nd Defendants herein in respect of the same complaints that have been raised herein, it is hereby directed that the Plaintiff shall not file any application against them without leave of the court.

9. It is so ordered.

DATED and DELIVERED at NAIROBI this 30th day of July 2020

J. KAMAU

JUDGE