



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. E036 OF 2020

HATARI GUARDS SECURITY LIMITED.....PLAINTIFF

-VERSUS-

STANDARD GROUP PLC.....1ST DEFENDANT

BRIAN OBUYA.....2ND DEFENDANT

SIRAJURAHMAN ABDULLAHI.....3RD DEFENDANT

RULING

1) On 5th November 2020, Mr. Wairoto, learned advocate for the plaintiff/applicant virtually appeared before this court and in the absence of Mr. Wakwaya, learned advocate for the defendant/respondent and beseeched this court to issue the following directions and orders:

i. To be granted leave to file a supplementary affidavit with a flash disk as an annexure.

ii. To grant the respondent leave to file if need be supplementary submissions.

2) The learned advocate argued that a link had been provided to the court and the defendant but it appears the defendant had been unable to access hence the need to avail the video clip using a flash disk.

3) Upon considering the plaintiff's application this court issued the following orders and directions:

a) The plaintiff/applicant granted leave 7 days to file a supplementary affidavit annexing a flash disk.

b) The plaintiff is to also avail a hard copy of the supplementary affidavit together with the flash disk.

c) The defendant/respondent to have 14 days from the date of service to file and serve supplementary submissions.

d) This matter to be mentioned on 25.11.2020 for further orders and directions.

e) The plaintiff/applicant to inform the defendant/ respondent's advocate of the aforesaid orders and directions by way of email.

4) When this matter came up for mention on 25.11.2020, Mr. Wakwaya, learned advocate for the respondent made an oral application and urged this court to review and set aside the order or direction granting the plaintiff leave to file a supplementary affidavit with a flash disk annexure. The learned advocate also urged this court to expunge from record the supplementary affidavit together with the accompanying flash disk.

5) He argued that the plaintiff/applicant introduced new evidence and alleged that the plaintiff's advocate had misled the court that a link had been provided to the defendant's advocate to access the video clip.

6) Mr. Wairoto, learned advocate for the plaintiff/applicant urged this court to dismiss the defendant's oral application. He stated that he did not mislead the court. He pointed out that the supporting affidavit sworn by Dr. Steve Mwangi Kimani in support of the motion dated 7.7.2020 had referred to video evidence marked as annexures no. S.M.K. 1 and S.M.K.4.

7) He averred that there was an averment that there is a dropbox link where the video clips could be looked and downloaded. The learned advocate stated that the dropbox link could not be viewed the defendant's learned advocate. Mr. Wairoto also averred that he contacted Mr. Wakwaya to inform him that he was going to seek for leave to file a supplementary affidavit to introduce the video clip. This court was urged to dismiss the review application in the interest of justice.

8) In response, Mr. Wakwaya stated that the plaintiff's advocate stole a match by introducing new evidence without consulting him. He stated that the plaintiff's supporting affidavit did not have a specific paragraph referring to a dropbox.

9) I have considered the oral arguments made by learned counsels. The defendant's advocate raised two main grounds in support of his application to have the plaintiff's further affidavit together with the flash disk annexure expunged from record.

10) First, he stated not the plaintiff's advocate had misled the court that a link had been provided yet there was none.

11) Secondly, that the plaintiff had introduced new evidence thus stealing a match.

12) I have carefully perused the supporting affidavit plus the annexures. It is clear in paragraphs 1 and 2 of the aforesaid supporting affidavit that the plaintiff/applicant had referred to a true copy of the video clip of the features and copies of the screenshots of the 1st defendant's YouTube channel and website. There is an annexure marked S.M.K.1 titled "**Rusty Gold: investigating Murders linked to Lethal Scrap Metal Industry**".

13) A dropbox link is provided therein. It is apparent that the plaintiff provided a link hence the plaintiff's advocate did not mislead this court. It is also clear that the flash disk attached to the supplementary affidavit is no new evidence but the evidenced already referred to in paragraphs 3 and 8 of the supporting affidavit of Dr. Steve Mwangi Kimani.

14) It is therefore obvious that the objection and application made by Mr. Wakwaya lacks merit. The same is dismissed with costs abiding the outcome of the motion dated 7th July 2020. The defendants should therefore abide by the exparte orders and directions given on 5.11.2020 by filing if they deem necessary, supplementary submissions within 7 days from the date of this ruling.

Ruling on the motion dated 7/7/2020 to be delivered on 18/12/2020.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 27th day of November, 2020.

.....

J. K. SERGON

JUDGE

In the presence of:

.....**for the Plaintiff**

.....**for the Defendant**