



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL MISC. APPLICATION NO. 25 OF 2016

BENSON GITERU MUCHOMBA.....APPLICANT/RESPONDENT

VERSUS

TAHIR SHEIKH SAID GRAIN MILLERS LIMITED....RESPONDENT/APPLICANT

RULING

1. By its application dated 17/10/2018 the respondent/Applicant prays for order

(a) There be temporary stay of proceedings in Kitale CMCC No. 228 of 2016 pending the determination of application dated 20th July 2018.

(b) This court be pleased to set aside the proceedings of 24th July, 2018 and 19th September 2018 in Kitale CMCC 228 of 2016.

2. The application is supported by the sworn affidavit of Kevin Ngoya Murake Advocates dated 17th October 2018.

3. Without reiterating the contents of the said affidavit, the applicants depones that they did file an application dated 20th July 2018 to forestall proceedings in Kitale CMCC 228 of 2016 which was due for hearing on 30th October 2018. The said application was heard in Eldoret before Hon. Justice Sewe where she gave temporary orders of stay and ordered the matter to be disposed by this court.

4. Apparently the applicant was unable to trace the file movement and only came to discover later that the same was brought before this court in its absentia and the same referred to the registry. The temporary orders lapsed. The applicant has attached two letters dated 7th August 2018 and 13th September 2018 seeking to show the efforts it did to trace the file.

5. Essentially therefore this application seeks to have the original application be heard on merit and the orders of stay reinstated.

6. The Respondent has filed his grounds of objection dated 25th September 2018 as well as the replying affidavit dated 20/11/2018. He said that the primary suit at the lower court has been determined and is due for judgment on 20/1/2018 and this application has been overtaken by events. He has further mentioned that the applicant has been intolent in prosecuting the application and that the entire application is an abuse of the court process.

7. At this juncture it would be premature for this court to delve into the merits or demerits of the application dated 20th July 2018. Suffice to state that the current application has merits to the extend that the two correspondences by the applicant to the Deputy Registrar of this court has not been challenged by the Respondent. it appears on the face of it that the applicant was unable to trace the movement of the file court from Kitale to Eldoret and from Eldoret to Kitale.

8. The order of 25th July 2018 were issued exparte by my colleague and it appears that the Applicant was not aware that the same was due for inter-parties hearing on 1st August 2018.

9. In my view therefore the blame should be shared perhaps between this courts registry and the applicant. Needless to say I do not see any loss on the part of the Respondent should the application dated 20th July 2018 be heard. In any event the same was not dismissed or struck out. The issues raised by the Respondent would clearly be ventilated or at least no evidence was tendered.

10. Although it was stated that the lower court judgment was due for delivery, the same as at the time of this ruling seemed not to have been delivered .

11. A cursory look at the application dated 20th July 2018 seemed to raise some arguable legal points especially the applicants legal status.

12. In the premise I hereby allow the application dated 17th October 2018 as follows;-

a) The application dated 20th October 2018 be set down for hearing and determination.

b) There be stay of proceedings in Kitale CMCC No. 228 of 2016 pending the hearing and determination of the application dated 20th July 2018.

c) Costs of this application to the Respondent.

Orders accordingly.

Delivered, signed and dated at Kitale this 22nd day of January 2019.

H.K. CHEMITEI

JUDGE

22/1/19

In the presence of:

Parties absent

Court Assistant – Kirong

Ruling read in open court.