

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL CASE NO. 11 OF 2014

FREDERICK REMARQUE CHITECHI.....PLAINTIFF

VERSUS

SAMANTHA & CO. ASSOCIATE.....1ST RESPONDENT

KIPRONO KITTONY & GROUP.....2ND RESPONDENT

GEORGE M. MUSUNDI & GROUP.....3RD RESPONDENT

KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY.....4TH RESPONDENT

RULING

1. On 20th March 2019, I granted orders in Kakamega HC Misc. Case No. 41 of 2019, allowing reconstruction of the court file in Kakamega HCCC No. 11 of 2014, the instant suit. The application in Kakamega HC Misc. Case No. 41 of 2019 had been brought at the instance of the plaintiff in the instant suit, Frederick Remarque Chitechi. The order granted was to the effect that a skeleton file be constructed for the instant suit.

2. It is not clear from the record before me whether a skeleton file was ever constructed as ordered, for a perusal of the record before me has not yielded copies of the pleadings that had been filed to initiate the cause, nor of the pleadings filed in response, any typed proceedings available to the parties and copies of any rulings that might have been delivered in the matter.

3. Rather than provide the court with documents for the reconstruction of the court file as envisaged in the order of 20th March 2019, the plaintiff herein lodged an application herein on 17th April 2019, dated 16th April 2019, by way of a motion, seeking a variety of orders. He has attached copies of processes in the instant cause, being applications, written submissions, orders, rulings, among others. It is not clear whether the documents are intended to be annexures to his motion, or they are the documents for the reconstruction of the court file.

4. The orders sought in the motion seek to stop the respondents from interfering with the instant suit and the plaintiff's projects pending hearing *inter partes* of the motion. There are also prayers relating to conduct of national elections.

5. I have closely perused through the documents before me, and I have not encountered any pleading in the form of a plaint, or any other pleading originating the cause. The motion I am called upon to determine is interlocutory. Such an application has no life of its own and rides entirely on the originating pleadings. Without originating pleading there would be no foundation upon which I can determine the application, as it is not clear to me what is sought in the principal pleading.

6. Secondly, regarding the prayers sought in the said application, even if there was an originating pleading in the file, I do not find material which can provide a basis for grant of the orders sought. There is nothing to indicate whether the respondents had interfered with the court file to warrant their being restrained from interfering with it. The plaintiff talks of his projects in the prayers, but there is nothing to identify the said projects to warrant orders being made with respect to them. There is also no material on misconduct with regard to the national elections to warrant grant of orders for stoppage of conduct of the same.

7. I am not persuaded from the material before me that I should grant the prayers sought. I shall dispose of the application dated 16th April 2019 by dismissing the same in its entirety. Although the plaintiff purported to urge the application dated 15th March 2019, I do note that the same was not filed in this cause but in Kakamega HC Misc. Case No. 41 of 2019, and the same was disposed of on 20th March 2019 as indicated paragraph 1 of this ruling.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 20th DAY OF September 2019

W MUSYOKA

JUDGE