



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
MISCELLANEOUS APPLICATION NO. 245 OF 2017
IN THE MATTER OF COMPANIES ACT 2017
AND
HANNAH WANJIKU KINYUA.....APPLICANT
VERSUS
ELIUD KARANI MURIMI.....RESPONDENT

R U L I N G

The Respondent herein filed a reference by way of chamber summons dated 2nd October 2017. It seeks to review orders issued on 14th July 2017 limited to no.6 only. Ground on the face of the Applicant is that the Respondent is unable to file record of accounts as the one Timothy Mugoh Kinyua a brother to the Applicant herein (Hannah Wanjiku Kinyua) who was working as an accountant in the company herein deserted office and left with all books of accounts; that he therefore lacks the ability to comply with item 6 of the Court order.

In response the Applicant averred that the application is unmerited and that contrary to the Respondent's contention that the said Timothy Kinyua carried away books of accounts the annexures show his willingness to ensure smooth running of the business. He further averred that the serious allegation of theft by servant have not been supported or reported to the police. That there is no mention of the allegation in the communication to the said Timothy nor has she received any letter on the said allegations. She averred that the allegation of theft is an afterthought as it has not been raised in previous Court appearances. She averred that it is the Respondent who is actively taking steps to subvert the course of justice by registering another business with a name close to the company's Vineyard Real Estate Limited.

Respondent submitted that item number 6 in the ruling was granted *ex parte* without the benefit of any input from the Respondent and for stated above the Respondent is incapable of complying with item no.6 of the orders of 14th July 2017.

The Applicant/Respondent submitted that the Respondent Applicant has not raised sufficient grounds has laid down in order 45 Rule 1(1) of the civil procedure Rules and particularized in **NAKURU HCC NO. 11 2000 TERESIA NYAKAIRU VS GEORGE OTIENO** where Justice Ouko particularized grounds for review while quoting **NATIONAL BANK OF KENYA LTD VS NDUNGU NJAU.**

Grounds cited are:-

1. Discovery of new and important evidence,
2. Error apparent on the face of record,
3. Any other sufficient reason and
4. It should be made without delay.

Applicant herein submitted that it is necessary for the Applicant to state which of the 3 first grounds he is relying on; that the Applicant herein has failed to do so and the omission and the omission is fatal. He submitted that grant of review order is discretionary and is intended to avoid injustice or hardship resulting from inadvertence, mistake or error but not to benefit a person who has deliberately either by evasion or otherwise to obstruct or delay the course of justice.

I have considered rival arguments. I wish to consider whether the Applicant herein has raised sufficient grounds to warrant review of order no.6 issued requiring compliance by the Respondent. From correspondences attached.

The question as to whether the books of accounts were illegally taken by the said Timothy will be established at the hearing as the allegation is denied in the averments herein. Whether the said books of accounts prior to filing this suit are available or not, if the company has continued to run, a report on monies received and withdrawn from the company account should be filed as directed by Court. I didn't ask for audited accounts but giving account of monies received and withdrawn. This application appears to me as an attempt by the Respondent to avoid complying with the Court order. I see no reason to vary the said order. The order earlier issued stands. Report on monies received and withdrawn to be filed in Court and served on the Applicant on a monthly basis w.e.f from time the order was issued pending determination of this suit.

Dated and Delivered at Nairobi this 9th day of February 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

.....COURT ASSISTANT

.....COUNSEL FOR APPLICANT

.....COUNSEL for RESPONDENT