



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**MISCELLANEOUS SUIT NO. 232 OF 2014**

**JOSEPH NJOGU NJUGUNA.....PLAINTIFF**

**- VERSUS -**

**KEVIN LEWIS SAFARI.....DEFENDANT**

**RULING**

1. **Joseph Njogu Njuguna (Joseph)** was successful in having the arbitration award between him and **Kevin Lewis Safara (Kevin)** recognized by the High court, in this matter, through the ruling of **19th January, 2016**. **Joseph** by that arbitration award was awarded **Ksh 10, 940,000**.

2. **Kevin** has filed an application by way of **Notice of Motion** dated **5th February, 2018** seeking stay of these proceedings and consequential orders herein, pending hearing and determination of their **Civil Suit No 6 of 2018**.

3. **Kevin** in **Civil Suit No 6 of 2018** sued his former lawyer, who failed to file a defence before the arbitrator consequent to which an award, as stated before was made in favour of **Joseph**.

4. **Kevin** in support of his **Notice of Motion** of **5th February 2018** in part deponed in **his affidavit** dated **5th February 2018** as follows:

“4. That the decretal award arose from arbitration proceedings that were undefended by my previous advocates which award has continued to accrue interest and as at 17th October, 2017 amounted to Ksh. 18,264,698.60. Annexed hereto and marked ‘**KLS 1**’ is a letter from the Plaintiff’s advocates to my current advocates dated **15th December 2017** demanding full settlement of the decretal award.

5. That it is because of my advocates failure in the arbitration proceedings to file a defence and to represent me in the proceedings that the decretal award was issued against me to which i have instituted an action against the advocate in **Civil Suit No. 6 of 2018 (Kevin Lewis Safari vs. Stanley Kang’ahi T/A Kang’ahi & Associates)** for the advocate to be found liable to pay the decretal award arising herein. Annexed hereto and marked ‘**KLS 2**’ is a copy of the plaint.

6. That I am advised by my advocate on record which advise i verily believe to be true that it is mandatory for every advocate of the High Court of Kenya practicing on his own behalf to purchase a policy of insurance referred to as the **Professional Indemnity Cover**.

7. That I am advised by my advocate on record that the **Professional Indemnity Cover** taken out by advocates shall always be used in the compensation of clients for loss or damage from claims in respect of any civil liability or breach of trust by the advocate.

8. That in the circumstances hereof it is prudent for stay orders to be granted until the determination of **Civil Suit No. 6 of 2018** which suit will determine the extent of my liability in settling the decretal sums.

9. That I will be greatly prejudiced if the orders sought are not granted since the decretal award to be settled is substantial and I cannot fully settle the amount at once as demanded by the plaintiff hence it is just for the proceedings and any consequential orders arising herein to be stayed pending the hearing and determination of **Civil Suit No. 6 of 2008**.”

5. The application is opposed by **Joseph** through his replying affidavit dated **21st February 2018** and through his preliminary objective dated **20th February 2018**. The essence of both of those documents is that this court lacks jurisdiction to entertain the application.

6. *Kevin* relied on the provisions of Order 51 Rule 1 of the Civil Procedure Rules section 2 (1) and 3 of the Advocates (professional indemnity) regulation 2004 and Sections 1 A, 1B, and 3A of the Civil Procedure Act Cap 21.

7. The first issue to determine is whether *Kevin* was entitled to rely on those provisions of the law.

8. The Arbitration Act Cap 49, particularly Section 10, prohibits intervention of other provisions of the law in arbitral matters. That section provides:

*“except as provided in this act, no court shall intervene in matters governed by this act.”*

9. In the case of Anne Mumbi Hinga Vs Victoria Njoki Gathara [2009]eKLR the Court of Appeal considering an appeal from an order where the appellant had relied on various orders of the civil procedures stated as follows:

*“A careful look at all the provisions cited in the heading in the application and invoked by the appellant in the superior court clearly shows that, all the provisions including the Civil Procedure Act and rules do not apply to arbitral proceedings because Section 10 of the Arbitration Act makes the Arbitration Act a complete code and rule 11 of the Arbitration Rules cannot override Section 10 of the Arbitration Act....”*

10. It is therefore clear that *Kevin* erred to invoke provisions of other statutes in respect of an arbitral matter which is prohibited under Cap 49. This court has no power and no jurisdiction to intervene in a manner not provided under Cap 49 in an arbitral matter. Courts should always play a supportive role as provided under Section 10 of Cap 49. This is well stated in the case of Anne Mumbi Hinga (supra) as follows:

*“We therefore reiterate that there is no right for any Court to intervene in the arbitral process or in the award except in the situations specifically set out in the Arbitration Act or as previously agreed in advance by the parties and similarly there is no right of appeal to the High Court or the Court of Appeal against an award except in the circumstances set out in Section 39 of the Arbitration Act.”*

11. It is because of the above holding that the *Notice of Motion* dated 5th February 2018 is *dismissed* with costs to *Joseph Njogu Njuguna*. He is also awarded costs of the *Preliminary Objective* dated 20th February 2018.

**DATED, SIGNED and DELIVERED at NAIROBI this 13th day of June 2018.**

**MARY N. KASANGO**

**JUDGE**

**Ruling read in open court in the presence of**

Court Assistant.....Sophie

.....for the Plaintiff

.....for the Defendant