



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 81 OF 2016**

**PAVANI MITTLE CHETAN.....PLAINTIFF**

**VERSUS**

**CHETAN HEMANTKUMAR PAVANI.....RESPONDENT**

**RULING**

1. The application that I am called upon to determine is dated 20<sup>th</sup> July 2017. It seeks stay of execution of an order made herein on 13<sup>th</sup> June 2017, leave for the law firm of TK Rutto & Co Advocates to come on record for the plaintiff and review of orders made herein 6<sup>th</sup> September 2016 and 27<sup>th</sup> April 2017.

2. The plaintiff's case appears to be that upon dismissal of her application herein on 6<sup>th</sup> September 2016 with costs, the defendant went ahead and had the costs taxed. He is now in the process of seeking to execute to recover the costs. In the meantime, the plaintiff moved the lower court successfully for orders of maintenance. The said orders were granted, and an effort by the defendant to stay that maintenance order at the High Court in an appeal filed in a separate cause has failed. I understand the plaintiff to be telling the court that in view of the developments, the court ought to revisit its orders of 6<sup>th</sup> September 2016 with a view to setting them aside.

3. The defendant has responded to the application by filing notice of preliminary objection saying that the main suit was incompetent and therefore the instant application cannot be sustained. He also argues that the court has since become *functus officio*. He has filed a bundle of authorities that support his position. He has also filed a replying affidavit to place before the court a ruling made recently by the lower court on the maintenance order

4. The parties have filed detailed written submissions on the matter complete with the authorities that they rely on. I have read through them and noted the arguments advanced.

5. The order that I made herein on 6<sup>th</sup> September 2016 was to dismiss the Motion herein dated 12<sup>th</sup> July 2016 with costs. It was my finding that the said Motion was incompetent and I had opined that the plaintiff ought to have had filed a substantive suit. This she appears to have done at the lower court and to have obtained orders therein favourable to her. The dismissal of the said Motion then meant that the cause herein was exhausted as it was the said Motion that had given it life. With its dismissal the cause died, and the matter came to an end.

6. I have read and reread the application dated 20<sup>th</sup> July 2017 and it is unclear to me the nature of review that the plaintiff seeks. Is she seeking a review of the order dismissing the Motion, or the finding that the suit was incompetent, or the order on costs? What purpose would be served by the revival of the suit if the plaintiff has gone to several other courts and filed competent suits where the issues raised in the dismissed Motion were addressed substantially, and it would appear that she has obtained favourable orders.

7. What I understand the plaintiff to be doing is to have the orders of 6<sup>th</sup> September 2016 vacated so that she does not have to pay the costs ordered and taxed. If she was unhappy with those orders she ought to have appealed against them. She is, however, seeking to do so it through an incoherent and misconceived application.

8. I do not see any basis for the application before me, and I do hereby dismiss the same. The plaintiff is initiating multiple litigation in various courts instead on concentrating on prosecuting the primary suit, which is before the lower court. To discourage this sort of practice I shall order that she pays costs of this application. She shall have leave to appeal against these orders at the Court of Appeal, within twenty-eight (28) days.

**DATED, SIGNED and DELIVERED at NAIROBI this 27<sup>TH</sup> DAY OF JULY, 2018.**

**W. MUSYOKA**

**JUDGE**