



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO.37 OF 2015

MARICUS OTIENO OKWAYO.....APPELLANT

VERSUS

JOHN K. ROTICH & YAYA CAR SALES (K) LTD.....RESPONDENTS

(Being an appeal from Hon. J. Ndururi, PM in Kericho CM CC No.324 of 2012)

AND

CIVIL APPEAL NO.11 OF 2016

MARCUS OTIENO OKWAYO

(Chairman suing on behalf of Payroll Self Help Group)....APPELLANT

VERSUS

YAYA CAR SALES (K) LTD.....RESPONDENT

(Being an appeal from Hon. J. Ndururi, PM in Kericho CM CC No.324 of 2012)

RULING

1. The appellant, Maricus Otieno Okwayo, filed the present appeal and Civil Appeal No. 11 of 2016 against two rulings made by J.R. Ndururi (PM) on 22nd September 2015 and 22nd March 2016 respectively. When the matters came up before this Court for directions on 1st December 2016, Mr. Okwayo indicated that he had filed written submissions dated 1st December 2016 which he did not wish to highlight.

2. Mr. Meroka, Learned Counsel for the respondent in this matter, submitted that there was no competent appeal that the court could issue directions with respect to, and he prayed that the appeal be struck out. He further observed that the submissions which the appellant had filed that morning were very disturbing, both to himself and to the court. He urged the court to bring the circus to an end and consider *suo motu*, declaring the appellant a vexatious litigant.

3. I have read, with a mixture of astonishment and horror, the submissions filed by the appellant in this case, which he indicated should apply to both Civil Appeal No. 37 of 2015 and 11 of 2016. In his submissions, the appellant does not address himself to his appeal. The submissions are an extreme excoriation of this Court in particular, but also of Learned Counsel, Mr. Meroka, Hon. Ndururi, and Hon.

Limo. The appellant accuses this Court of bias, irrationality and unreasonableness due to a decision it rendered in **Civil Appeal No. 40 of 2014- Maricus Otieno Okwayo vs Zedekia Kaku** involving the appellant. He asks the Court to recuse itself and transfer his appeals far away from Kericho.

4. It appears, judging from the submissions before this Court, that there is no single judicial officer in the entire county of Kericho who can deliver justice as defined by Mr. Okwayo. The submissions and allegations made against this Court and other judicial officers are scandalous and without basis.

5. However, Mr. Okwayo is a citizen of this country, and is entitled to justice. What he is entitled to, however, is objective justice, not justice on his terms. This is what this Court rendered in **Civil Appeal No. 40 of 2015**, which has precipitated the insults and accusations contained in the appellant's submissions. The record and judgment in that appeal are self-explanatory.

6. The Court will therefore not accede to the invitation by Mr. Meroka to declare the appellant a vexatious litigant. There may well be something that this Court and other judicial officers in this station are missing, though I doubt this. This Court renders and has always rendered judgment in accordance with the dictates of justice, without bias, fear or favour. Indeed, had there been any basis for complaint, the option open to a dissatisfied litigant is to appeal.

7. In the interests of justice, and to avoid delay in the disposition of Mr. Okwayo's appeals, these two matters will be removed from this registry to another registry "*far away from Kericho*". I believe the High Court Registry in Nakuru, which handles matters in the absence of a Judge in Kericho, is far away enough to satisfy Mr. Okwayo.

8. I therefore direct that the files on Civil Appeal Nos. 37 of 2015 and 11 of 2016 be transferred to the Nakuru High Court and placed before the Presiding Judge for directions with regard to hearing and determination.

9. In transferring these matters, as demanded by the appellant, from the Kericho High Court Registry, I am conscious of the need to balance the interests of the parties. The respondents will be put to the expense of travelling outside Kericho to deal with this matter. The rules of procedure with regard to territorial jurisdiction are that a matter should be instituted where the defendant resides, or where the cause of action arose. I believe the same applies with respect to appeals. In this case, the cause of action arose in Kericho, and the respondents, I believe, reside in Kericho. There is a High Court in Kericho that is competent and can hear the appellant's appeals, but the appellant wishes to be heard elsewhere.

10. Consequently, to safeguard the respondents' interests also, I direct the appellant to deposit a sum of kshs.50,000/- in court in Nakuru where his appeals will be heard, prior to fixing the appeals for hearing. Should he succeed in his appeals, then the amount shall be released to him. Conversely, should the respondents succeed, the said amount can be used to defray their costs.

11. It is so ordered.

Dated, Delivered and Signed at Kericho this 29th day of March 2017.

MUMBI NGUGI

JUDGE