

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 462 OF 2014

MOSES ONGONGA NYABINDA.....PLAINTIFF/RESPONDENT

- V E R S U S -

NAIROBI CITY COUNTY.....1ST DEFENDANT

SHAMSHERALI HUSSEIN.....APPLICANT/2ND DEFENDANT

RULING

1) Shamsherali Hussein, the applicant herein, was on 15.5.2015 convicted for contempt of court. He was found to have disobeyed injunctive orders issued vide Nairobi C.M.C.C.C. no. 7520 of 2013 restraining him from destroying the respondent's business premises in Balozi Estate. On 20.5.2016 the applicant was sentenced and ordered to pay a fine of ksh.100000 in default to serve three(3) months civil jail. The applicant was on 23rd September 2016 prompted to file the motion dated 23.9.2016 in which he sought to have the orders reviewed and set aside. The respondent filed a notice of preliminary objection to resist the motion. When the motion for review came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.

2) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. I have also considered the notice of preliminary objection plus the rival submissions.

3) It is the submission of the applicant that the respondent did not disclose material information. It is argued that the respondent had alleged that the applicant was the cause of his misfortunes and that he was in contempt of court orders yet the orders were incapable of being enforced. It is the applicant's submission that this fact was not brought to the attention of this court. It also argued that the respondent did not disclose to this court that the applicant is neither a staff of Nairobi City County (1st defendant) nor the urban planner to enforce the court orders. The applicant also pointed out that the respondent failed to disclose to court that there were pending proceedings which would affect the import of the injunctive proceedings.

4) The respondent opposed the motion alleging that the order sought to be reviewed has not been annexed. It is also argued that the application is resjudicata.

5) Having considered the rival submissions and the material placed before me, it is apparent that Mr. Malinzi, learned advocate for the applicant while making submissions in mitigation on behalf of the applicant stated before this court that the applicant was remorseful and that he regrets breaching the court orders. On the basis of those powerful submission this court pronounced a non-custodial sentence against the applicant. I have examined the conduct of the applicant and his advocate and it is clear to me that both the advocate and his client willingly admitted that the applicant disobeyed a lawful court order. There was no iota of evidence that the respondent was guilty of any material non-disclosure. In my humble consideration, I find no merit in the motion for review. The application does not meet the principles applicable in such applications.

6) In the end, I find no merit in the application. It is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 29th day of September, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Respondent

..... for the Applicant