



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CIVIL SUIT NO. 27 of 2017

PETER MWANGI MWAURA.....PLAINTIFF/APPLICANT

VERSUS

GEOFFREY KAMAU WAWERU.....DEFENDANT/RESPONDENT

RULING

1. The Plaintiff herein sued the Defendant for dissolution of a partnership agreement he alleges exists between himself and the Defendant. The Plaintiff also sought accounts of the partnership business known as “Tulia Gardens” from the date of inception till dissolution and that the Plaintiff’s shares be rendered. He also sought general damages.

2. Simultaneously with the Plaint, the Plaintiff took out a Notice of Motion of even date seeking certain interlocutory orders. On 15/06/2017, I gave a ruling granting the following orders to the Plaintiff:

i. First, pending the hearing and determination of the suit or until further orders, an interlocutory injunction shall issue prohibiting the Defendant from selling, transferring, subletting or in any other manner disposing or offering to dispose of the partnership business, or any part thereof known as Tulia Gardens situate at Muthiga, Kinoo.

ii. That within thirty days of today, the advocates of the two parties do agree on a date when the Plaintiff and/or his agents will access the place of business and inspect any goods, books, records and the running of the business for purposes of collecting information to prosecute their case.

The two parties’ advocates are directed to plan the visit so that it is as least intrusive as possible. To ensure the smooth operation of the visit, the parties may incorporate and provide for the Executive Officer, Kiambu Law Courts to be present to record the proceedings and make a report to the Court.

iii. The parties shall move with speed to perfect this case for hearing. To this extent, the matter shall be listed before the Deputy Registrar within the next forty five (45) days for further directions.

3. On, 31/07/2017, the parties appeared before me and Counsel for the Plaintiff reported that the Plaintiff had been unable to access the book of accounts. I ordered that the books of accounts be deposited with the Plaintiff’s counsel within 30 days.

4. On 10/10/2017, the parties appeared before me again. The Defendant had, yet again, failed to comply with the orders I had given. I ordered that he does so within seven days. I also directed that he files his Defence and Witness Statements within seven days.

5. On 27/10/2017, the Plaintiff filed the present application. In the main, it seeks the following prayers:

i. That, pending the hearing and determination of this suit or application or until further order, a temporary injunction do issue to restrain the Defendant and/or the 2nd Respondent by themselves, their servants or agents from wasting, damaging, alienating, selling, or offering to sell or otherwise dispose of and/or removing from the suit property any of the chattels located at and being part of the assets of the business know as Tulia Gardens situate at Muthiga, Kinoo.

ii. That the Defendant has failed to comply with orders issued on 31/07/2017 by the Honourable Prof. Joel Ngugi and consequently the Plaintiff shall henceforth run/manage the business know as Tulia Gardens situate at Muthiga, Kinoo, upon such terms as the court may direct, and the Defendant is mandatorily enjoined from interfering in any manner whatsoever with the running of the business.

iii. That the Defendant having failed to file and serve his witness statement as directed by the order issued on 10.10.2017 by Honourable Prof. Joel Ngugi judgment be entered in this suit against the Defendant.

6. The main reason for the Application and its urgency is that the 2nd Respondent, who is the lessor of the premises on which the business known as Tulia Gardens, the subject of this suit, is situate has claimed sums in excess of Kshs. 500,000/= as unpaid rents and the Plaintiff is apprehensive that legal proceedings leading to the sell of the properties of the business might ensue.

7. The Plaintiff alleges that the Defendant is running down the business and failing to pay debts and overheads and thus threatening the substratum of this suit and causing prejudice to the Plaintiff who may be deemed liable for the debts as a partner. The Plaintiff is also aggrieved that the Defendant has failed to comply with the orders issued this Court on 15.06.2017 and 31.07.2017 requiring him to give the Plaintiff access to the book of account of the subject business and has instead filed in Court on 17.10.2017 a bundle containing what he calls “indecipherable documents” which cannot be termed as books of account.

8. Further, the Plaintiff asserts that the witness statement filed by the Defendant’s Advocates on 17.10.2017 in undated and unsigned and cannot be ascribed to the Defendant.

9. The 1st Respondent did not file any response to the Application. Instead, on the date schedule for hearing, a lawyer sent by the 1st Respondent’s Counsel appeared briefly and stated that he was there to take instructions. I pointed out to him that the matter was coming up for hearing and placed the matter aside for the 1st Respondent’s Counsel to be present later. When I called the matter out again at 12:10pm, the 1st Respondent’s Counsel was still not in Court. Consequently, I allowed Mr. Githuka, Counsel for the Plaintiff to urge the application in the absence of the 1st Respondent’s Counsel.

10. The 2nd Respondent filed a Replying Affidavit. In essence, it supports the Application and adds material facts which paint a picture of a failing business.

11. The Application is unopposed. There is enough on the Court record, the affidavit of the Plaintiff supporting the Application, and the Replying Affidavit of the 2nd Respondent deponed on 13/12/2017 to give the Court a glimpse into what is going on in the business. The Plaintiff is, in my view, justified to be fearful that if the orders sought are not granted, the purpose of the suit will be rendered nugatory. There will be no suit to litigate about; no partnership worth dissolving and rendering accounts.

12. Consequently, I will grant orders (ii) and (iii) in the Notice of Motion dated 27/10/2017. I will also direct the Plaintiff to file an appropriate Application to strike out the Defence if he is of the view that it should not see the light of day.

13. Orders accordingly.

Dated and delivered at Kiambu this 21st day of December, 2017.

.....

JOEL NGUGI

JUDGE