



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NUMBER 48 OF 2013

DAVID MBURU KAMAU.....PLAINTIFF/APPLICANT

VERSUS

1.MARY MUMBI NG'ANG'A.....1ST DEFENDANT/RESPONDENT

2. GEORGE KORI NJUGUNA.....2ND DEFENDANT/RESPONDENT

**3. NEW MUKO & MT. SINAI HOTELS LTD.....3RD
DEFENDANT/RESPONDENT**

RULING

By a plaint filed in this court on the 11th June 2013 and dated 10th June 2013, the plaintiff David Mburu Kamau t/a Rovida Wines and Spirits sued the defendants the registered owners of business premises situated within Nakuru Municipality and known as **Nakuru Municipality Block 5/127**.

The plaintiff sought that a consent order recorded on the 27th March 2013 in **Business Premises Rent Tribunal (BPRT) No.5 of 2013** between the parties therein who are the same parties in this suit be declared null and void and that the terms of a lease agreement entered between them on the 1st January 2006 be reinstated. He further sought damages for an alleged loss arising from the Consent Order entered in the **BPRT No.5 OF 2012**.

Together with the plaint, the plaintiff filed an undated Notice of Motion but filed on the 11th June 2013, seeking a Myriad of orders against the Respondents/defendants in the main suit. The application is brought under **Order 40 Rules 1, 2, 3, 4, 5 and 6 of the Civil Procedure Rules** and is supported by an affidavit sworn by the applicant on the 11th June 2013.

The applicant seeks the following orders:

1. Spent
2. Pending the hearing and determination of this application, the court be pleased to grant an injunction refraining the defendants by themselves, agents, managers, servants from executing the alleged consent order given on the 27th March 2013.
3. That pending the hearing and determination of this Notice of Motion the court be pleased to grant and issue an injunction restraining the defendants by themselves, their agents and servants from harassing and interfering with the plaintiffs operations under the

name M/S Ronda Wines and Spirits situated on suit property **Nakuru Municipality Block 5/2012.**

4. Pending hearing and determination of the application, the status *quo* prior to the consent order of 27th March 2013 in the **BPRT No.5 of 2012** be reinstated pursuant to the lease agreement dated 1st January 2006.

At this point and before proceeding further, I must state that the pleadings in this case and the application are so poorly drawn that doubts are raised as to who prepared the same. They cannot possibly have been drawn by a person schooled in law with a legal mind and training.

My doubts lead me, as an officer of the court on my own volition, to seek to confirm from the Law Society of Kenya(LSK) whether or not the said **Michael W. Waikenya Advocate** was or is an advocate and entered in the roll of Advocates and his status as at June 2013 when the said pleadings are shown to have been drawn by the said Advocate.

My inquiries from the Law Society of Kenya Secretariat reviewed, by its letter dated 23rd October 2015, that the said **Waikenya Michael Wanyoike Advocate (P105/877/77) LAST took out his practicing certificate in the year 2012, and therefore he is not licensed to practice law.** The letter from the Law Society of Kenya is attached to this ruling.

The court records show that the plaint was prepared, drawn and filed by Michael Waikenya Advocate on the 10th June 2013 and filed on the 11th June 2013 and filed on the 11th June 2013. The application under consideration was too drawn and filed by the same advocate and filed on even date.

The firm of Njuguna Matiri & Company Advocates filed a Notice of Change of Advocates for the plaintiff on the 26th June 2013. However the primary pleadings and the application were drawn by an advocate who did not hold a valid practicing certificate, and therefore not authorised to practice law. To that extent, the entire suit together with the application are incompetent and candidate for striking out.

I need not go into the merits of the application as doing so would be a waste of precious Judicial time and entertaining an incompetent application. See among many other decisions – **Court of Appeal Civil Appeal NBI 146 of 2000. Geoffrey Orai-Obura -vs- Martha Karambu Koome** where the appeal filed by an advocate without a practicing certificate was struck out as incompetent as it was filed by an unqualified person.

The undated application filed on the 11th June 2013 together with the plaint dated 10th June 2013 prepared and signed by **Advocate Michael W. Waikenya** are hereby struck out with costs.

Dated, signed and delivered in open court this 29th day of October 2015.

JANET MULWA

JUDGE