



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC NO. 1048 OF 2013

JACKSON MIRING’U KIMANI.....PLAINTIFF/APPLICANT

-VERSUS-

CANNON INSURANCE.....DEFENDANT/RESPONDENT

RULING

1. The application before this court is a Notice of Motion dated 26th September 2013. The same is brought under Order 33 rules 1, 2, 3 and 8, Order 51 rule 1 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil procedure Act. The applicant seeks the following orders:

That this Honourable Court be pleased to declare the applicant a pauper within the meaning of Order 33 for purpose of the following;-

- i. Extracting the decree and instituting execution proceedings against the defendant with respect to judgment obtained in HCC no. 4511 of 1990 Jackson Miring’u Kimani vs. Richard Githenya Gichuru and specifically declaratory proceedings against Cannon Insurance Company Limited.
- ii. That costs be in the cause.

2. The motion is grounded on the grounds;

- i. That the applicant has obtained in his favor a judgment in HCC no. 4511 of 1990 and requires Kshs. 1,340,000 awarded to enable him meet the needs of his family
- ii. That the applicant has no other sources of income since he was rendered blind by the accident and cannot effectively run his business and does not have any other gainful employment.
- iii. That he undertakes to pay the Court fees on receipt of the monies from the respondent as decreed by the Court.
- iv. That this Court has power and discretion to grant the orders sought in the interest of justice.
- v. The respondents stands to suffer no loss or prejudice if the orders sought are granted.

3. The application is supported by the affidavit of Jackson Miring’u Kimani sworn on 26th September, 2013. He reiterates the grounds on the face of the application and further depones that; he was involved in

a road accident on 26th March 1988 and he successfully sued the defendant for special and general damages. On 22nd February 2008 the Court awarded Kshs. 1,340,000/- damages together with costs and interest. He depones that he is unable to afford the Kshs. 60,000/- required as further Court fees to enable him execute or the Kshs. 70,000/- required to file a declaratory suit against Cannon Insurance Company Limited the insurers of the said motor vehicle under Cap 405 Laws of Kenya; that he is desperately in need of the funds to enable him cater to his family's needs; that he was advised that he can apply to file suit as a pauper during the judiciary open day at Githunguri Court held last year.

4. The application came for hearing on 12th May 2014 and the applicant sought to rely totally on the grounds on the face of the application and the supporting affidavit.

5. I have considered the application. It is an *ex parte* application. The applicant has attached a letter from the Assistant Chief that states that the applicant Jackson Miringu Kimani hails within his sub-location he has been blind for several years and has several children in school and attests that his is a very needy case and recommends him assistance. The applicant has also attached a letter from Medical Superintendent of Kiambu District Hospital dated 28th May 2009 which indicates that the applicant lost his sight in 1994 after ingesting alcohol contaminated with methanol. He also attached a Judgment which awarded him damages on his claim against the defendant from injuries sustained in the said accident.

6. This application is brought under Order 33 of the Civil Procedure Rules provides for the procedure for filing of suits by paupers as follows:

“1. (1) Subject to the following rules, any suit may be instituted by a pauper.

(2) For the purposes of this Order a person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the institutions of such suit.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard pleadings, together with a statement that the pauper is unable to pay the fee prescribed in such suit, and the whole shall be signed in the manner prescribed for the signing of pleadings.

3. Notwithstanding anything contained in these Rules, the application shall be presented to the Court by the applicant in person unless the applicant is exempted from appearance in Court by section 82 of the Act, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

8. Where the application is granted, it shall be deemed the pleading in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner except that the plaintiff shall not be liable to pay any court fee.”

7. I have considered the application and all the documents attached and the provisions of Order 33 rules 1, 2, 3 and 8 and Order 50 rule 1. Order 33 (2) states that a person is a pauper is when he is not possessed of sufficient means to enable him to pay the fees prescribed by law for institution of such suits. Order 33 (5) entitles the Court to reject such an application *inter alia*, where it does not show a cause of action.

8. The applicant as a result of the accident suffered various injuries going by the judgment Justice Nambuye in rendering her judgment observed that,

“the fact that it is almost 20 year since the accident and the plaintiff is not yet fit to fend for himself. He has to rely on his father PW2 for sustenance.”

The applicant has since gone blind this he claims has made him incapable of carrying out his businesses

and he is also not in gainful employment. The applicant seeks conditional relief from paying court fees and is ready to commit himself to pay the Court fees once the said judgment award is paid to him by the defendant/respondent. In the Court of Appeal case of **Richard Akwesera Onditi -vs- Kenya Commercial Finance Co. Ltd Civil application Civil Application Nai 234 of 2005 (KSM.27/05 UR)**, it was held that;

“The directions are conditional upon the applicant furnishing to the Deputy Registrar an undertaking signed by the applicant to pay the fees or the balance of the fees out of any money or property he may recover in or in consequence of the appeal.”

This Court is satisfied from the facts adduced by the plaintiff that he is not possessed of sufficient means to pay the fees prescribed for the institution of a declaratory suit against Cannon Insurance Company Limited. Prayer no. 1 is granted, the applicant is declared a pauper within the meaning of Order 33 for purpose of the following;-

- i. Extracting the decree and instituting execution proceedings against the defendant with respect to judgment obtained in HCC no. 4511 of 1990 Jackson Miring’u Kimani vs. Richard Githenya Gichuru and specifically declaratory proceedings against Cannon Insurance Company Limited.

This is granted on condition the applicant furnishes the Deputy Registrar with a signed undertaking that he will pay the fees once he succeeds in executing against the defendant for the judgment amount by awarded by the Court within 21 days from the date of this ruling. Costs be in the cause.

Orders accordingly.

Dated, signed and delivered this **22nd** day of **May** 2014.

R. E. OUGO

JUDGE

In the presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

.....Court Clerk