



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 424 of 2006

JOHNSON DANSON KIBINDA. .... PLAINTIFF

VERSUS

UNIVERSITY OF NAIROBI. .... DEFENDANT

R U L I N G

There is in this file an application by a Notice of Motion dated 17<sup>th</sup> April, 2013. It is filed by O P Ngoge & Associates on behalf of the Plaintiff and seeks the following reliefs.

- a) That the plaintiff/applicant be granted leave to execute forthwith the judgment and decree of this court given by Rawal J, as she then was, on 28<sup>th</sup> October, 2011 before taxation of party to party bill of costs.
- b) That cost of the application be provided.

When this application came up for hearing on 29<sup>th</sup> April, 2013, the Defendant applied that

- i) the hearing thereof be stopped,
- ii) that the application be placed before Odunga, J for hearing because he had made relevant orders earlier,
- iii) that this court has no propriety or face to hear the application since the Counsel for the Plaintiff had filed a suit before the African Union Human Rights Court at Banjul, Gambia, stating that he had no faith in the Kenyan Judiciary and so he should not be entertained by the Kenyan Judiciary until the case is disposed of.

Mr. Ngoge however, replied and stated: -

- i) *That there is indeed an unchallenged decree in favour of the Plaintiff for ksh.900,000/- which is lawful and open for execution subject to court orders as sought in the application.*
- ii) *That his representation of the Plaintiff although purported to be taken away by the unilateral notice of the plaintiff, is still valid as per the provisions of Order 5 Rule 9 of the Civil Procedure Rules.*
- iii) *That the suit before the African Union Human Rights Court in Banjul has nothing to do with the Kenyan Law in relation to the legal practice by individual advocates such as Mr. Ngoge.*

iv) ***That Odunga, J's order that part of the decretal sum amounting to ksh.500,000/- be deposited in court for a different purpose, did not take away this court's jurisdiction to hear the said application dated 17<sup>th</sup> April, 2013.***

v) ***That there are personal differences between the said Judge and him (Mr. Ngoge) and that therefore the said application should be heard by this court.***

I have carefully considered the oral application by Mr. Kipkorir that this court should not hear the said application dated the 17<sup>th</sup> April, 2013. I have as well examined the court file record.

I will first start considering the issue of the case before the African Union Human Rights Court. In my view there is nothing barring this court from hearing this application merely because Mr. Ngoge or his legal firm has filed the above mentioned case at Banjul. Mr. Ngoge has freedom to do whatever he thinks are his rights. The African Union Human Rights Court will hear the case, when it does, and make relevant orders within its jurisdiction. It is only when any such orders are made, if any will be made, that this court will know how such orders are relevant to the Kenyan Judiciary and to what extent such orders will affect the jurisdiction of the Kenyan Courts. Until then, the case has no relevant to this court and this court will say no more. More so, because the said court has not so far made any interim orders affecting the Kenyan Judiciary.

As to the request that this court desists from hearing the said application dated 17<sup>th</sup> April, 2013, and places the same before Odunga, J this court finds no basis for the request. Odunga, J was hearing a different application which led him to make the order that part decretal sum be deposited in court. The honourable judge is no longer in the Civil Division whose cases must continue being heard. This court, therefore, has jurisdiction to continue hearing any civil matter in its division. In any case, I am satisfied that the orders made by Odunga, J when he was in this division to the effect that a deposit of part of the decretal sum be made to court, has little to do with the application dated 17<sup>th</sup> April, 2013 which seeks leave to execute the Judgment which to date is lawful and unchallenged. In the circumstances, I find no merit in this ground of objection also.

The defendant also alleged that the legal firm of O P Ngoge & Associates is not properly on record having been removed by the Plaintiff's personal notice to act in person. The court's view is that until the requirements of order 5 Rule 9 have been complied with by the Plaintiff, the representation of him by O P Ngoge & Associates is still lawful.

In these circumstances, the legal firm of O P Ngoge & Associates, may proceed to fix the application dated 17<sup>th</sup> April, 2013 for a hearing before any judge in the Civil Division. Whether or not the said application will however, succeed without the decree arising from the entry of Judgment of Ksh.900,000/- is approved by the counsel for the Defendant and the Plaintiff, as is the requirement of the law, is an issue of merit based on facts and circumstances of the case left to the court that will hear the application.

In the meantime, this court urgently requires the Deputy Registrar who sealed and issued the Decree on 28<sup>th</sup> October, 2011 and 27<sup>th</sup> February 2013 respectively to discuss with the Judge in Chambers as to how the sealing and issuance of the decree came about. Orders accordingly.

Dated and delivered at Nairobi this 14th day of May, 2013.

.....  
**D A ONYANCHA**  
**JUDGE**