



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO. 424 OF 1996**

**SAIFUDEEN ABDALLAH BHAI..... PLAINTIFFS**

**VERSUS**

**M/S ZAINAB MWINYI ..... DEFENDANT**

**RULING**

[1] On 24th June 2013 the applicant herein filed a notice of motion praying that the defendant Zainab Mwinyi be arrested and committed to prison for a term not exceeding six months. The applicant averred that the reasons for such committal was that the respondent had disobeyed the court orders of injunction granted by the Court on 13.3.1997.

[2] During the hearing of the said motion Mr. Mr. Khatib learned counsel for the respondent raised a preliminary objection. The injunction under reference was issued on 13th March, 1997. This was some 16 years ago. He relied on Order 40 rule 6 which provides that an injunction must lapse after the expiration of 12 months. He argued that even if it was to be assumed that the current Civil Procedure Rules came into operation in 2010 the order herein lapsed in 2011 by virtue of Order 4 Rule 6 aforesaid. He maintained that there was no injunction in force and that the application dated 20th June 2013 was incompetent and prayed that it should be dismissed with costs to the respondent.

[3] Mr. Anyanzwa Learned Counsel for the applicant argued that the injunction was given until the determination of the suit. That there was no change of the order. That Order 40 Rule 6 was not law when the order of injunction was made in 1997. He argued that if it was the intention of Parliament for the current Civil Procedure rule also apply retrospectively, parliament should have said so. He argued that Order 40 rule 6 does not therefore apply to this injunction.

[4] Mr. Khatib Learned Counsel for the respondent on reply stated that Order 54 Rules 1 and 2 revoke the previous rules. He argued that, that was his basis for maintaining that the injunction had lapsed on 2011.

[5] Order 40 Rule 6 states as follows;

*"Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise."*

Order 54 rule 1 states

*"The Civil Procedure Rules are revoked"*

Rule 2 of the same Order states;

*"In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, but without prejudice to the validity of anything previously done"*

It is quite clear from the foregoing Civil Procedure Rules therebefore were revoked. Subsection retained the validity of actions done under the old rules. Validity of granting the injunction orders is not an issue here. The applicant should have moved the court on coming of the new rules to have the injunction orders subsisting extended as the new law required. There was one year to do so. This was not done. The injunction orders therefore were vacated by effluxion of time. Time being one year after the new procedure rules came into force.

I agree with Mr.Khatib that there is no injunction inforce. His preliminary objection is sustained and allowed. The notice of motion of 20th June, 2013 is dismissed with costs to the respondents.

**DATED and delivered in open Court at Mombasa this 26th day of July, 2013.**

**S.N. MUKUNYA**

**JUDGE**

**26.7.2013**

**In the presence of:**

Mr. Khatib Advocate for the defendant

Mr. Anyanzwa for plaintiff - absent