



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 253 OF 2009 & 306 OF 2011

DAVID GITHERE & 15 OTHERSPLAINTIFFS

VERSUS

WALTER NYAMBATI & 3 OTHERSDEFENDANTS

AND

CIVIL CASE NO. 306 OF 2011

LABAN ONDITI RAO & 4 OTHERS.....PLAINTIFFS

VERSUS

STEPHEN MBUGUA & 5 OTHERSDEFENDANTS

AND

REGISTRA-GENERAL & 2 OTHERS.....INTERESTED PARTIES

R U L I N G

1. In directions herein dated 9th and delivered on 10th February 2012 the parties in both these suits were required to address the court

“regarding the propriety or otherwise of staying all the proceedings and orders made in case No. 306 of 2011 in order to facilitate effectuation of the very noble orders made in case No. 253 of 2009”.

2. Indeed the Plaintiffs in Case No 306 of 2011 filed their submissions dated 17th on 20th February 2012. The 1st, 2nd and 3rd Defendants filed their submissions dated 1st on 5th March 2012. No other party filed submissions or addressed the court on the issue at hand.

3. I have considered the submissions filed. No cases were cited.

4. In the aforesaid directions dated 9th and delivered on 10th February 2012 I pointed out that I had spent a considerable amount of time and effort perusing through the two files and noted the important

orders made in Case No. 253 of 2009 by Mwera, J on 6th May and 19th July 2011. The intention of those orders was to facilitate elections of the management and leadership of the **Kenya National Chamber of Commerce and Industry** (the **Chamber**) right from the grassroots to headquarters in order to bring to an end the recurrent wrangles over leadership and management of that important body.

5. I further commented as follows in those directions -

“It appears to me, *prima facie*, that the latter suit, Case No. 306 of 2011, may have been instituted deliberately to frustrate the ... orders and efforts made by the court in Case No. 253 of 2009. At any rate, orders were made in the latter suit whose effect quite clearly has been to frustrate and render ineffective the orders and efforts made in the first suit.”

6. Having considered the submissions filed, I note that both suits are substantially between the same parties over the same subject-matter. That subject-matter is the leadership and management of the Chamber. The latter suit was filed when orders had already been made in the earlier suit for elections of the leadership and management of the Chamber.

7. The later suit was filed in a **different** division of the High Court without disclosing the earlier suit, and while in fact a ruling was pending in the earlier suit. The orders made in the latter suit have done nothing but frustrate effectuation of the orders made in the earlier suit intended to facilitate elections of the leadership and management of the Chamber.

8. In the aforesaid directions I further observed that if this situation persists, the dispute over the leadership and management of the Chamber will never end, and the court and the parties shall all be *“going round in circles like a cast in a theatre of the absurd”*.

9. I am more convinced than ever that it is necessary that the proceedings and all orders made in HCCC No. 306 of 2011 be stayed pending full effectuation of the orders made in HCCC No. 253 of 2009 intended to facilitate elections of the leadership and management of the Chamber. It is so ordered. This stay will remain in place until the further order(s) of the court. Further appropriate orders may be made in HCCC No. 253 of 2009.

10. Those will be the orders of the court. Costs shall be in the cause.

DATED AT NAIROBI THIS 19TH DAY OF APRIL 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL 2012