

a) That although the Hon. Justice Mutava and Justice Mabeya, Justice Aluoch, Justice. Mutungi (HCCC 17 of 2001 and HCCC 335 of 1997) had indicated that the Applicant should file an application for contempt in a proper manner, the Plaintiff/Applicant (decree holder) is pleading with the Hon. Court to find that, complaints that the lands and court registry are assisting the intruders/transferees lite pendent to deceive the court and obstruct the course of justice by issuing them with false and unauthorized certificate of lease (2), false and unauthorized court decrees (2) and a false certificate of taxation etc is a serious matter which requires urgent court attention and action. The then Registrar of the High Court Hon. Njai had directed that the Respondents be prosecuted for contempt in 2006, the Applicant (decree holder) has been reluctant to use this course because of the consequences of such action.

b) That since 1997, to date, the Respondents and their agents have been taking the court in expensive circles instead of simply prevailing on the court orders and decrees or applying to be made parties to the suits. That these expensive circles have resulted in accumulation of court actions and huge bills for losses, damages and costs with no indication as to how and when they will be paid. The Respondents are building up estates and paying dividends yet they have been served with seizure notices for the accumulating bills which they have not settled.

c) That instead of settling these served bills or prevailing on the served court orders and decrees, the Respondents and their agents are insisting on intrusion (forceful trespass) into the Plaintiff/Applicant (decree holder's) matrimonial home, affairs and accounts and other properties. Further the Respondents and their agents are aggravating the losses, costs and damages with malice, unnecessary delays and obstruction of the execution of the served court orders and decrees using force, illegal, unlawful and other uncivilized methods their excuse being that they were not parties to the suits and they are therefore allowed to obstruct the course of justice, by making and using false and unauthorized banking, court and land documents and to her illegal/unlawful means.

3. The application is supported by affidavit of the Plaintiff/Applicant **MR. MICHAEL MUNGAI**. The application is alleged to be preceded by many applications among them those dated **17th May 2012, 21st December 2009, 29th April 2011, 11th April 2011 and 25th July 2011** and others going up to alleged 19 applications currently pending in this matter. .

4. The application is opposed by the 1st Defendant/Respondent, while the rest of the Respondents have not replied or responded to the application.

5. I have had the chance to look at the previous proceedings in this matter. I have considered the Ruling delivered by Justice Mabeya on **27th January 2012** where the Judge had this to say at page 10 of the Ruling.

“Further in my ruling of 4th November 2011, I had advised the Applicant to take legal advice if possible. I am still of the strong view that substantive justice is in having his suit heard and not the many interlocutory application . . .”

6. I have also considered the Ruling of Justice Mabeya dated **4th November 2011**, and that of Justice Odunga dated **March 2012** where the learned Judge had this to say:-

“From the records it appears that the application dated 21st December 2009 was dismissed by Kimaru Judge in his Ruling dated 19th March 2010. Although the Applicant contends it was reinstated there is no record of such re-instatement.”

7. I have further considered the Ruling of Justice Mutava on **25th May 2012** where the learned Judge had this to say:-

“I have perused the application and the same is essentially raising matters which the courts have dealt with before.”

8. This current application is opposed by the 1st Respondent, who submitted that all allegations of contempt have not been proved. Mr. Leichena for the 1st Respondent submitted that the suit herein was dismissed on **25th February 2003**, and that the application to reinstate the same was filed but has never been heard. As long as the suit stands dismissed, the only application this court can entertain is an application to reinstate the suit. Mr. Leichana submitted that this has not happened since the Plaintiff has filed one application after another, hence the said 19 applications all on the same issues. Mr. Leichana urged the court to dismiss this application.

9. The second application is a Notice of Motion dated **23rd July 2012** by the 1st Respondent. It is filed under **Order 26 Rules 1, 5 and 6** of the **Civil Procedure Rules 2010** and **Section 3A** of the **Civil Procedure Act**. It seeks the following orders:-

i. That the Honourable Court be pleased to certify this application as urgent and be heard *ex-parte* in the first instance.

ii. That the Honourable Court be pleased to order the Plaintiff herein to give security for costs for an amount not less than Kenya shillings one million (Kshs.1,000,000/=) pending and or before the hearing of his 19 nineteen application filed herein.

iii. That the Honourable court be pleased to order the Plaintiff herein to give security for costs for an amount not less than Kenya shillings one million (Kshs.1,000,000/=) pending and or before the hearing and determination of the suit herein.

iv. That the said amount of security ordered in (ii) and (iii) above be deposited in court or in joint account to be held by the 1st Defendant advocates and the Plaintiff.

v. The costs be in the cause.

The application is based on the following grounds:-

i. That the Plaintiff filed this suit in the year 2001 and since then he has been day in day out filing applications which currently now stand at 19 in number as the court records will show.

ii. That the 1st Defendant Housing Finance Company of Kenya Ltd. is incurring huge losses in terms of court fees and legal fees wherein the Plaintiff keeps filing applications.

iii. That the Honourable Court on the 10th day of July 2012 ordered the applications to be heard on the 23rd day of July 2012.

iv. That if the Plaintiff is not ordered to file security for costs before these applications are heard the 1st Defendant will stand to suffer irreparable loses and damages.

v. That it is fair, just and mete for the orders prayed be granted to enable justice to be done.

These applications were canvassed together although the Plaintiff did not make any response to this second application.

10. I have considered these two applications together. In answer to the first application by the Plaintiff, I have also considered the Rulings delivered previously by this court. It is clear that the Plaintiff has filed so many applications on the same issue. This is itself an abuse of the court process. Secondly, it is clear that the Plaintiff does not understand clearly the process of court or the legal issues in this matter.

He has been advised previously to seek legal counsel. I also advice the Plaintiff to do that or else, very soon, the Plaintiff's applications will become openly an abuse of the process of the court. Although the Plaintiff has been advised by Judges of this court to stop filing any further applications and to have

this suit, if it is still existing, set up for hearing, the Plaintiff has disregarded this counsel. I herewith reiterate that advice and direct that the Plaintiff stops filing any further applications in this matter and that instead, he seeks to set this suit for hearing.

11. I have also considered the 2nd application. In my view it is merited. The 1st Respondent is spending a lot of money hiring lawyers and other services to respond to these 19 applications. The 1st Respondent is clearly entitled to security for costs to be provided by the Plaintiff.

12. In the upshot I make the following orders:-

a) The Plaintiff's Chamber Summons application dated **18th June 2012** is herewith dismissed with costs to the 1st Respondent.

b) The Plaintiff is directed not to file any further applications in the registry in respect to this matter, but instead set down the suit, to the extent that the same still lives, for hearing for eventual determination and disposal thereof.

c) To the extent that the Plaintiff complies with order (b) above and ceases to file any further applications and instead sets the suit for hearing the second application by the 1st Defendant shall not be granted.

d) Should for whatever reason the Plaintiff insist on filing any further applications in respect of this matter, then the Plaintiff must first give security not for the suit, but for every such application filed, or to be filed, of Kshs.100,000 to cover approximate legal costs for the five Respondents. Such money shall be deposited in court at the time of the filing of such application.

These are the orders of the court.

DATED, READ AND DELIVERED AT NAIROBI

THIS 11TH DAY OF OCTOBER 2012

E. K. O. OGOLA

JUDGE
PRESENT:

Munga in person for the Plaintiff

Kimani H/B for Mugambi for the Defendants

Teresia – Court Clerk