



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 364 of 2012

MAGDALINE OKORA GWERE

T/A NAKURU GOLDEN KIDS ACADEMY.....PLAINTIFF

VERSUS

JANE MAJUMA ODINGO.....1ST RESPONDENT

EVERLINE A. OCHANDA.....2ND RESPONDENT

JULIET BOYANI NYAMWEYA.....3RD RESPONDENT

RULING

By an application dated 28th September 2012 and filed in this court on the same day, the Defendants sought the following orders -

(1) That the Application herein be certified urgent and be heard expeditiously and service thereof be dispensed with in the first instance.

(2) That pending the hearing and determination of this application and/or suit, the Honourable Court be pleased to extend the interim orders issued on 3rd June 2012 by the lower court to preserve the suit properties.

(3) That this Honourable Court be pleased to give an urgent hearing date for the application dated 9th July 2012 which was certified as urgent by the lower court and should have been heard but for the order of transfer to this court.

(4) That the costs of this Application be provided for.

The Application is supported by the Affidavit of Jane Majuma Odingo sworn on 28th September 2012. The Plaintiff (*Respondent herein*) has opposed the application by the Replying Affidavit sworn by Margidalina Okora Gwere on 15th October 2012 and filed in this court on 16th October 2012. On 3rd October 2012, prayer 1 and part of prayer 2 were granted by this court pending the hearing of the application *inter partes*.

This suit had been filed in the Chief Magistrate's Court in Nakuru as NAKURU CMCC 717 of 2012. The Applicants herein had filed an application in the lower court which application was heard *ex parte* and interlocutory injunctive orders made by the court on 3rd July 2012 pending the hearing and

determination of the said application inter partes. This matter was transferred to the High Court pursuant to the order made on 19th September 2012. The Applicant herein now seeks to have the interim orders made on 3rd July 2012 extended pending the hearing and determination of this suit.

The court had by the order made on 13th July 2012, ordered that there be a stay of the proceedings before the lower court pending the hearing and determination of that application of transfer of suit. Counsel for the Applicants submitted that it is in the interest of justice that the orders that were subsisting at the time when the matter was stayed are extended pending the hearing and determination of the suit.

Counsel for the Respondent opposed the application for extension of the orders. He submitted that the application was misconceived and had been brought to court in bad faith and the same was inept. He submitted that there were no interim orders in place to be extended as the same lapsed when the matter came before the magistrate last time and the same were not extended and there is nothing for extension. He accuses the Applicant of misleading the court by telling it that the orders are likely to elapse when the same have in fact elapsed. He further argued that no prejudice would be suffered by the applicant should the application be disallowed.

I, with respect to counsel for the Applicants, agree with the submissions by counsel for the Respondents that no prejudice would be suffered by the Applicants if the application herein is disallowed. I say so because -

- (a) *the dispute herein concerns a partnership which has gone sour,*
- (b) *the partnership concerns the operations of a school – a Kindergarten,*
- (c) *from the various affidavits it is clear none of the parties is willing to work with the other,*
- (d) *if there were any funds paid or contributed by the Applicants that is a matter which can go to trial and will be subject to strict proof,*
- (e) *any contribution made by the Applicants in kind such as furniture would be a matter for discovery in preparation of the hearing of the suit.*

For those reasons, I decline to grant the prayers of injunction sought by the Respondents in the counter-claim and dismiss the application dated 28th September, 2012.

As the parties are former teaching colleagues, I direct that each party bears its own costs.

Dated, signed and delivered at Nakuru this 6th day of December, 2012

M. J. ANYARA EMUKULE

JUDGE