



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 319 OF 2008

**AHMED NOORANI.....PLAINTIFF/
APPLICANT**

V E R S U S

**JOYCE AKINYI OCHIENG'.....DEFENDANT/
RESPONDENT**

R U L I N G

On 2nd November 2010 the Plaintiff filed a motion under section 5 of the Judicature Act (Cap. 8) seeking to have the Defendant committed to civil jail for contempt of the court order made on 28th July 2010. The order that was made on that day was that:-

“The defendant shall therefore, within 30 days of this ruling cause to be deposited a sum of KShs. 4,400,000/= with Plaintiff’s advocates Messrs. Okongo Omogeni as sought in the Notice of Motion.”

It is the Plaintiff’s case that the money was not deposited within the 30 days, or at all. Okongo Omogeni advocates were then acting for the Plaintiff. Subsequent to the order, Mutuli & Apopo Advocates came on record for him.

When the application came for hearing, the Defendant filed a motion under section 134 (1) of the Evidence Act, section 3A of the Civil Procedure Act and Order 40 of the Civil Procedure Rules seeking that the court orders that the firm of Mutuli & Apopo Advocates does not continue to act for the Plaintiff. The reason is that there is **HCCC No. 350 of 2008 (OS)** filed by the Defendant’s estranged husband Antony Chinedu Ifedigbo against her. He was seeking 50% share of certain properties including L.R. No. 3734/223 I.R. 10532 registered in her name. Villa No. 5 which is constructed on this parcel is the subject of the present suit. In Antony’s case the matter was filed along with summons for

injunction. The Defendant herein instructed P.C. Onduso Advocates to act for her. Mr. Onduso of the firm then instructed Mr. Mutuli of Mutuli & Apopo Advocates to lead him in the matter. The Defendant briefed Mr. Onduso and Mr. Mutuli about her case and handed to them all the necessary documents and information to enable them represent her. She is therefore saying the firm of Mutuli & Apopo Advocates, of which Mr. Mutuli is a partner, is in possession of confidential information it has acquired while acting for her in Antony's case and that for the firm to be allowed to act for the Plaintiff herein would not only be unethical but also in breach of section 134(1) of the Evidence Act. She is represented by Mr. Kabiru & Co. Advocates.

Mr. Kabiru and Mr. Apopo addressed the court on which motion should be taken first. It is true that where a party alleges that there has been contempt of an order of the court, the court usually stops every other business to deal with the allegation and determine it. This is because the Applicant would be saying that the authority of the court is being undermined and the administration of justice is being put to disrepute. The matter has to be inquired into urgently so as to restore the authority of the court and confidence in the administration of justice. It is for this reason that Mr. Apopo asks that the Defendant's motion be heard first. Mr. Kabiru's position is that, yes there is allegation of contempt but the application has been filed by an advocate whose partner had acted for his client in another matter over the same property and gained crucial information which he may use against her. The issue of whether the firm of advocates should be allowed to act for the Defendant is a matter that should be resolved first.

I agree with Mr. Kabiru that the Defendant's motion that attacks the representation by Mutuli & Apopo Advocates, on the basis of Mr. Mutuli's previous dealing with the Defendant, has to be dealt with as a preliminary issue. The alleged conflict of interest by counsel who have filed the contempt of court proceedings has to be inquired into and resolved to allow the court to decide whether the Plaintiff will continue with the present firm of advocates to prosecute his motion for contempt.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MAY 2011

A. O. MUCHELULE

J U D G E