



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

Civil Case 1389 of 2004

SOUTHDOWNS DEVELOPERS LIMITED.....PLAINTIFF/RESPONDENT

Versus

HAITHAR HAJI ABDI.....1ST DEFENDANT/APPLICANT

ABDI RAHIM HAITHAR HAJI.....2ND DEFENDANT/APPLICANT

RULING

On 9th November 2009 when the Duty Judge, Lady Justice Rawal, sent this case to me with Chamber Summons dated 5th November 2009 to handle, I certified it urgent and upon Mr. Albert Khaminwa's request, I fixed the Chamber Summons for interpartes hearing on 24th November 2009.

On 20th November 2009 Mr. Albert Khaminwa, on further developments, appeared before the Duty Judge again with a different Chamber Summons dated 20th November 2009 and got it certified urgent for interparties hearing on 24th November 2009 before me.

On 24th November 2009 therefore Mr. Albert Khaminwa representing Defendants/Applicants in this matter and Mr. Njenga representing the Plaintiff/Respondent appeared before me ready for hearing of the two applications each by Chamber Summons.

Up to this point, I had always thought from the various pleadings by the parties and court orders, that this suit involved landlord and tenants relationship. But having heard learned Counsels in the matter, I have learned this is a case involving a dispute over ownership of residential premises which originally belonged to the Defendants/Applicants. The Plaintiff claims to have bought the promises and that is the cause of the dispute over ownership between the Plaintiff and the Defendants.

There are some parties who seem to believe that once there is a dispute between two or more parties, the more court orders obtained between the same parties over same dispute, the better and in that respect the filing of a number of suits between same parties over same subject matter is encouraged. Parties in this suit seem to fall in that category of people and as a result this is not the only suit between them and the court order they want to get in these Chamber Summons will neither be the only court order nor the last court order between them.

My attention has been drawn to HCCC No. 6054 of 1991 and HCCC No. 1181 of 1992 as well as HCCC No. 447 of 2004. All between the same parties and concerning same suit property. Those are

decided suits which I think were settling the dispute between the parties, but the parties were not contented with those cases and therefore this suit was filed between same parties concerning same subject matter, the suit property. Already, a number of court orders have been obtained in this suit apart from court orders obtained in the rest of the cases. I would have thought such a situation will confuse issues and also complicate even an otherwise simple dispute. But parties in this suit do not seem to think that way and would feel comfortable enforcing or trying to enforce through this suit, a court order obtained in HCCC No. 6054 of 1991, and vice versa.

It may therefore be asked whether it was necessary to file this suit apparently to enforce court orders granted in HCCC No. 6054 of 1991 while at the same time the Plaintiff is attempting to enforce those same court orders inside HCCC No. 6054 of 1991. But parties would not accept possibility of any confusion.

In my view, the Plaintiff having decided to file this suit HCCC No. 1389 of 2004, the Plaintiff and Defendants must accept the reality of the operation of legal provisions like Order XXXIX of the Civil Procedure Rules even where the opposing party objects relying on the relevant court order given in HCCC No. 6054 of 1991 because that is the situation the parties, in practical terms, want to exist. They have created that situation themselves because the existence of HCCC No. 6050 of 1991 and the judgment therein will have to be a matter of evidence to be adduced, tested, canvassed and evaluated during the hearing of main suit HCCC No. 1389 of 2004. Until that is done, restraining orders may issue in HCCC No. 1389 of 2004 against execution of court orders in HCCC No. 6054 of 1991 for that is what the parties, by their conduct or otherwise, want and are applying for in HCCC No. 1389 of 2004 while at the same time admitting no confusion in their minds.

In HCCC No. 1389 of 2004 the Defendants filed their defence opposing the Plaintiff's claim thereby raising issues to be determined during the hearing and determination of the main suit. They dispute ownership of the suit premises by the Plaintiff. They live on and are in possession of the suit premises. Even if another suit has adjudicated upon the right of those parties, are the Defendants not entitled, in this new suit, to orders forcing the Plaintiffs retain the status quo until the main suit herein is heard and determined? The Plaintiff is himself to blame for creating that situation and let him face the consequences – his conduct in attaching and carrying away the Defendants' goods while attempting to evict the Defendants in disregard of proceedings and even court orders in HCCC No. 1389 of 2004 being conduct not expected of him by this court and therefore conduct to be condemned.

Accordingly, Chamber Summons dated 5th November 2009 is hereby granted in terms of prayers number three (3) and number four (4), while Chamber Summons dated 20th November 2009 is also granted in terms of prayers number three (3) and number four (4).

The Plaintiff/Respondent to pay costs of each Chamber Summons to the Defendant/Applicants.

Dated this 27th day of November 2009.

J.M. KHAMONI

JUDGE