



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 994 of 1998

1. SAMUEL SANG

2. HEMA INVESTMENTS LTD.PLAINTIFFS

V E R S U S

KENYA INDUSTRIAL ESTATES LTDDEFENDANT

R U L I N G

I have read the application by notice of motion dated 14th April, 2008 and the supporting affidavit. I have also given due consideration to the submissions of the learned counsels appearing. The application seeks an order for me to disqualify myself from further dealing with this matter upon the ground of bias.

When I heard *inter partes* the notice of motion dated 1st November, 2007, it was brought to the attention of the court that the parties were also before the Court of Appeal in **Civil Application No. NAI 280 of 2007 (UR 171/2007)**; ruling was pending delivery there on notice. It was common ground that the Court of Appeal ruling might have a bearing on the application that I had just heard. It was agreed by the learned counsels that the parties should be at liberty to bring to my attention the ruling of the Court of Appeal when delivered. In the meantime I tentatively reserved my ruling for 1st February, 2008. By that date the Court of Appeal had not delivered its ruling, and I ordered that my ruling would be delivered on notice (to await the Court of Appeal ruling).

By letter dated 1st April, 2008 the Plaintiffs' advocates herein informed the court that the Court of Appeal had delivered its ruling on 28th March, 2008. A copy of the ruling was attached to the letter. The letter also sought for mention of the matter on 4th April, 2008 for further orders. Paragraph 2 of that letter is important. It states:-

“The Judge had directed that either party to this matter was at liberty to apply when necessary in view of another ruling that was pending before the Court of Appeal between the same parties in Civil Application No. 280 of 2007 that had a direct bearing on the application before the Judge.”

The matter was indeed mentioned before me on 4th April, 2008

in the presence of both advocates. It turned out that the Defendant had the previous day filed an application herein by notice of motion dated 2nd April, 2008 for stay of execution of decree pending appeal on account of the Court of Appeal, in the ruling delivered on 28th March, 2008, having granted it leave to file notice and lodge record of appeal out of time. That application had been certified urgent by

the Duty Judge and fixed for hearing on 8th April, 2008.

Arguments were then made before me by the learned counsels as to whether the said notice of motion dated 2nd April, 2008 should be disposed of first before delivery of ruling in respect to the notice of motion dated 1st November, 2007. I ruled, for reasons given, that the notice of motion dated 2nd April, 2008 should be disposed of first. I also directed that the application be heard on 8th April, 2008 as already fixed by the Duty Judge.

It is principally that ruling that has given rise to the accusation of bias on my part. The ruling is not even mentioned in the application now at hand. Needless to say, the order has not been appealed against.

The mere fact of an order not being in favour of a party is not a sufficient reason for such party to impute bias on the part of the Judge. In the present case, as already observed, it was common ground that the ruling of the Court of Appeal might have a bearing on the application that I had heard. Indeed the Court of Appeal granted the Defendant extension of time to file notice of appeal and lodge record of appeal. Upon that dispensation granted it by the Court of Appeal the Defendant applied for stay of execution of the decree. After hearing both parties I ruled, rightly or wrongly, that the application for stay of execution should be disposed of first before delivery of ruling upon the notice of motion dated 1st November, 2007. A party dissatisfied with that ruling ought to have appealed rather than make baseless allegations of bias.

I have no personal interest in this matter, and none has been alleged. Having regard to the circumstances of this case as outlined above, there is no danger at all of bias on my part in the sense that I might unfairly regard, or might have unfairly regarded, with favour or disfavour the case of one or the other of the parties before me. There is not any reasonable ground at all for the Plaintiffs to apprehend that they may not get justice before me.

In the result, I find no merit in the application by notice of motion dated 14th April, 2008. It is hereby dismissed with no order as to costs.

DATED AT NAIROBI THIS 17TH DAY OF APRIL, 2008

H. P. G. WAWERU

J U D G E

DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2008