



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE 837 OF 2000

PALACE DRYCLEANERS LTD.....1ST PLAINTIFF

GEORGE GIKUBU MBUTHIA.....2ND PLAINTIFF/APPLICANT

VERSUS

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT/RESPONDENT

RULING

This is a suit which was filed in this court in May the year 2000 and as the Second Plaintiff George Gikubu Mbuthia points out, various judges in this court have handled the case. They include Justice Mbiti, Justice Hayanga, Justice Ransley, Justice Mugo, Justice Visram and now myself. The Judgments or orders those other Judges were making may or may not have been in favour of the Second Plaintiff, but he seems to have been taking all those court orders as valid until he got my first court order in this matter dated 13th March, 2008 dismissing his Chamber Summons dated 15th February, 2008 purporting to challenge taxation of the Respondents bill of costs by the Taxing Officer.

When I dismissed that Chamber Summons, I granted leave to the Applicant to appeal against my decision. But instead of appealing, the Second Plaintiff now that Applicant before me has come back with two applications. A Notice of Motion dated 31st March, 2008 and Notice of Motion dated 5th June, 2008. While the Notice of Motion dated 31st March, 2008 mainly seeks orders to set aside the orders I made on 13th March, 2008, the Notice of Motion dated 5th June, 2008 only seeks an order to “**set aside the certificate of taxation given by the Deputy Registrar on 5th day of September, 2007.**” It means the Notice of Motion dated 5th June, 2008 is a different framing of the Chamber Summons I dismissed dated 15th February, 2008.

During the hearing the Applicant appeared in person as before in my court while M/s Muema represented the Respondent. The First Plaintiff in the suit, Palace Drycleaners Limited have not been participating in proceedings before me.

The parties before me agreed to prosecute the two Notices of Motion together and it was surprising to see the Applicant abandoning all the other grounds in support of the two applications to confine himself to the ground of the jurisdiction of this court effective from time the suit was filed.

The Plaintiff in the suit was now telling me that his suit was void from the beginning and that therefore all the orders this court went on making, the court was making them when it had no jurisdiction to do so and

that now I should set aside all those court orders including mine made on 13th March 2008. That is what the Applicant went on telling me during the hearing on 1st July, 2008 quoting a number of case authorities despite the fact that he had not included a prayer to that effect in the two Notices of Motion or either of them. M/s Muema must also have been surprised as indicated in her opposition to the two applications.

In the circumstances, I have decided to be brief in this ruling by stating as follows

Firstly, the Notice of Motion dated 31st March, 2008 has not been brought under relevant provisions of the law governing review of previous court orders or judgment if that is what was intended by the Applicant who included no prayer about the jurisdiction of this court.

Secondly, the Notice of Motion is based upon extraneous grounds or issues which were not before me for consideration at the time I heard and decided the Chamber Summons dated 15th February, 2008.

Thirdly, and concerning the Notice of Motion dated 5th June, 2008, the same is res judicata following the Applicant's Chamber Summons dated 15th February, 2008 which the Applicant refers to as a Notice of Motion dated 15th February, 2008, heard and dismissed in my ruling dated 13th March, 2008.

Fourthly and general to both Notices of Motion before me, the Applicant in disguise in these two applications seeks to have me sit on an appeal not only against my own ruling but also against the orders or Judgments entered by my colleagues in this matter when I do not have the jurisdiction to do so. Having granted him leave to appeal, he ought to have appealed against my ruling to the Court of Appeal.

Moreover where a court of law has jurisdiction to entertain and determine a suit, a mere mistake in the relevant summons to enter appearance issued by the court and served, such as commanding the party served to enter appearance within a period of time other than the legally prescribed period of time if such really happened, does not take away that court's jurisdiction to entertain and determine the suit.

Based upon the above reasons, the Applicant's Notice of Motion dated 31st March 2008 as well as the Notice of Motion dated 5th June, 2008 be and are hereby each dismissed with costs to the Respondent.

Dated at Nairobi this 17th day of July, 2008.

J.M. KHAMONI

JUDGE

Further Order

Upon oral application by the Applicant George Gikubu Mbutia, leave to appeal against this Ruling granted.

J.M. KHAMONI

JUDGE

17.7.2008

Present

The Applicant in person

M/s Muema for the Respondent

Kabiru - Court Clerk.