



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

CIVIL APPEAL 335 OF 1997

MICHAEL MUNGAI.....APPELLANT/APPLICANT/DECREE HOLDER

VERSUS

NANCY WANJERI..... PETITIONER

KENYA COMMERCIAL BANK LTD.....1ST RESPONDENT

CHRISTOPHER AVISA.....2ND RESPONDENT

HOUSING FINANCE CO (K) LTD.....3RD RESPONDENT

KENYA BUILDING SOCIETY LTD.....4TH RESPONDENT

MR. MUNG'LA.....5TH RESPONDENT

R U L I N G

By an amended notice of motion dated 8th July, 2008, Michael Mungai has moved this court under Order XXI, Order XXXIX and Section 3A of the Civil Procedure Act, and Section 5 of the Judicature Act. The applicant is seeking *inter alia*:

1. Orders to stop Nancy Wanjeri (petitioner), Kenya Commercial Bank (1st Respondent), Christopher Avisa (2nd respondent), Housing Finance Co (K) Ltd (3rd Respondent), Kenya Building Society Ltd (4th respondent) and Mr. Mung'la (5th respondent), from malicious repeating in words and deed, false and malicious allegation that the appellant borrowed money from housing finance Company Ltd.
2. That the 5 respondents and their agents be ordered to vacate the appellant's property on LR.Nairobi Block 111/530. In default they be removed from the property by the OCPD/OCS Kayole Police Station.
3. that the five respondents be ordered to pay the applicant the extra bills for the losses, charges and costs caused by the publishing in words and deeds false and malicious allegations.
4. That warrants of attachment do issue against the respondent for the undisputed bills of Kshs.846,556,520/=.
5. That the court should cite and penalize the five respondents by ordering their arrest and committal to civil jail for contempt of court.

6. That the court do impose a fine of Kshs.100,000/= as punitive damages against the respondents.

The application is supported by an affidavit sworn by the applicant as well as grounds stated on the body of the application. In his supporting affidavit the applicant explains that the court in HCCC No.17 of 2001 (OS), issued an order blocking the sale of the applicant's aforementioned properties. The respondents however ignored the order and proceeded to transfer the property on the basis of false allegations against non-existent loans. Despite the applicant serving the respondents with court orders and proceedings, the respondents have continued to interfere in his affairs and to publish in words and deeds false and malicious allegations about the applicant regarding non-existent loans. The applicant maintains that the respondents are in contempt of court orders and it is fair that they be penalized to uphold the rule of law, authority and respect for court orders.

The applicant has sworn an affidavit in support of the application. The applicant depones that he is the owner of the suit property and the husband of the petitioner. He explains that on his application, the court did issue an order blocking the petitioner and the respondents from evicting him from the suit property. The court also issued an order restraining respondents from selling the suit property, the applicant having agreed to pay the petitioner half the value of the property. The applicant maintains that he has no loans or any connection with the 1st to 5th respondents. The respondents and their lawyers have however, continued to make false allegations against the applicant contending that he has a loan with the 3rd respondent which is due and owing. The applicant maintains that the 5 respondents and their lawyers are using forged/fake documents to delay/block the execution of lawful orders made by the court. The applicant maintains that as a result of respondents' actions, he has incurred loses to the tune of Kshs.846,556,520/=. The applicant further depones that the respondents are in contempt of the court orders as they have forced the applicant and his family to leave the suit property and they have forcefully occupied the suit property. The applicant therefore seeks the intervention of the court.

The application was served on the respondents but none has filed any response to the application. The respondents were also served with hearing notices but none attended court.

I have carefully considered the application before me. The applicant has raised substantive complaints. First, he appears to be complaining about being defamed by the respondents. Secondly, he appears to be complaining about substantial loss and damage arising from his alleged unlawful eviction from the suit property by the respondents. And thirdly, the alleged contempt of court orders by the respondents. I have also considered the court record with regard to this appeal. I note that the appeal was against orders made on 11th December, 1997 in a Divorce Cause No.122 of 1997 in the SRM's Court, Nairobi, wherein it was ordered *inter alia* that the applicant (who was the respondent in the divorce cause) vacates the suit premises i.e Komarock Sector 3A House No.283 by 13th December, 1997; that in default he be evicted; and that the couple be no longer bound to cohabit with each other.

This appeal was heard and the judgment delivered in favour of the appellant on 13th July, 1998. Subsequently, the appellant's bill of costs was taxed and he was awarded a sum of Kshs.311,290/=. In my considered opinion, the proceedings relating to this appeal have been finalized and there is no room for the applicant to canvass the substantive issues which he is now raising. Moreover, the respondents were not parties to this appeal and cannot be brought in at this stage. Further, the issues relating to defamation and damages, forms a substantive cause of action which can only be canvassed in a separate suit. Finally, the applicant cannot purport to enforce orders made in a different suit i.e. HCCC No.17 of 2001 "OS" in this particular appeal. For these reasons, I find that the application before me is misconceived and the same is accordingly dismissed.

Those shall be the orders of this court.

Dated and delivered this 16th day of October, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Appellant/applicant/decreed holder present in person

Advocate for the petitioner absent

Kariuki for the 3rd respondent