



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MOMBASA

Civil Suit 259 of 2006

ALI K. AHMED t/a SKY CLUB RESTAURANT..... PLAINTIFF

- Versus -

KABUNDU HOLDINGS LIMITED DEFENDANT

Coram: Before Hon. Justice L. Njagi

Mr. Kabundu for Applicant

N/A for Respondent

Court clerk - Abuya

R U L I N G

The prologue to this matter is that by an application by chamber summons dated 20th November, 2006, and brought under a certificate of urgency, the plaintiff herein was granted a temporary injunction on 21st November, 2006, for a period of 14 days. The defendant responded by filing its own application by chamber summons dated 24th November, 2006, under a certificate of urgency. It sought a discharge or stay of the temporary injunction granted on 21st November, 2006. The two applications were set down for hearing on 5th December, 2006.

On 1st December, 2006, at the instance of Mr. Oyoo for the plaintiff, the interim orders were extended to 5th December, 2006. Unfortunately the matter could not be reached on that day; and the interim orders were extended to the next hearing date which was to be given by the Registry.

The two applications next came for hearing on 1st March, 2007 when Mr. Oyoo appeared for the plaintiff. There was no appearance for the defendant. As a result, the matter was adjourned generally and the interim orders extended to the next hearing date. The matter then came for hearing on 22nd March, 2007, when it was again adjourned generally and the interim orders extended for 21 days.

The drama took the centre stage when M/s Oyoo & Co., Advocates for the plaintiff, filed an application by chamber summons dated 5th April, 2007, seeking an order that the application dated 20th November, 2006, be heard during the court's Easter Vacation. The matter came before the court on 10th

April, 2007, when Mr. Oyoo appeared for the applicant and Mr. Kabundu appeared for the respondent. Mr. Kabundu told the court that he had a preliminary objection which could dispose off the matter in 10 minutes, and Mr. Oyoo countered by saying that he too had a preliminary objection to raise in respect of Mr. Kabundu's application for the discharge of the temporary injunction granted on 21st November, 2006. The court directed that the two preliminary objections be taken together on 12th April, 2007.

On that date, Mr. Oyoo appeared for the plaintiff/applicant, and Mr. Kabundu appeared for the defendant/respondent. For reasons stated on the record, Seron J. directed that the matter be heard before this court on 3rd May, 2007. Unfortunately, the matter could not be reached and, by consent, hearing was stood over to 15th May, 2005.

Before the dawn of that day, by an application by notice of motion dated 4th May, 2007, and drawn and filed by Oyoo & Co., Advocates, the plaintiff sought an extension and/or reinstatement of the interim orders of injunction herein till 15th May, 2007. The application came before this court under a certificate of urgency of the same date, and was prosecuted by Mr. Oyoo. The court certified the same urgent; directed that it be served for hearing on 15th May, 2007; and that the status quo be maintained until that date.

As usual, on 15th May, 2007, Mr. Oyoo appeared for the plaintiff/applicant and Mr. Kabundu appeared for the defendant/respondent. Mr. Oyoo argued his application but Mr. Kabundu could not complete his response because of time constraints. The matter was then set down for further hearing on 20th June, 2007. When it was called out for hearing, neither of the parties was in attendance, and the matter was stood over generally. However, both Mr. Oyoo and Mr. Kabundu surfaced at 5.00 p.m. when the court was rising. Mr. Oyoo applied for an extension of the interim orders, and the court ordered that the status quo be maintained till the next hearing date. The matter finally came up on 3rd July, 2007, when Mr. Kabundu completed his response and Mr. Oyoo replied.

I have deliberately set out all these appearances in detail because of the nature of the matter now before the court. This matter is that before a ruling could be delivered on the preliminary objections, and for good measure, Mr. Kabundu stumbled across a circular letter Ref. 40/3 dated 19th July, 2007, addressed to all the courts by the Registrar of the High Court of Kenya. It touches upon and concerns advocates with current practicing certificates as at 12th July, 2007. it reads –

“In order to assist the courts in identifying Advocates practicing without Practising Certificates, I enclose herewith a list provided by the Law Society of Kenya containing names of Advocates with current practicing certificates as at 12th July, 2007.

Any Advocate whose name does not appear on the list should not be allowed to appear in court or to file pleadings. Kindly assist in safeguarding the interests of the public by enforcing the requirement that only advocates holding current practicing certificates are permitted to transact legal business.”

Sgd

C.K. Njai

Registrar

On 21st September, 2007, Mr. Kabundu appeared before me to mention this matter. He had served a Mention Notice on Mr. Oyoo the previous day, and Mr. Oyoo had acknowledged receipt by signing at the back. A copy thereof is annexed to the affidavit of service sworn and filed by one Jackson Mitau Ndambuki, an authorized court process server. Mr. Oyoo did not come to court personally. Instead, Mr. Kariuki held his brief.

Mr. Kabundu accused Mr. Oyoo of filing court applications and obtaining court orders when he did not hold a current practicing certificate. Mr. Kariuki told the court that Mr. Oyoo had been served with the mention notice only the previous day and needed more time to counter Mr. Kabundu's allegations. The court gave Mr. Oyoo seven days within which to file a copy of his practicing certificate. The matter was then listed for a further mention on 2nd October, 2007.

On the appointed day, Mr. Oyoo neither attended court nor was he represented. Furthermore, he had filed neither a copy of his current practicing certificate nor any other papers. Mr. Kabundu for the respondent referred specifically to the applications by chamber summons dated 5th April, 2007, and the one by notice of motion dated 4th May, 2007 for reinstatement of orders which had elapsed and invited the court to dismiss those applications, and set aside the orders with costs. He referred the court to KENYA POWER & LIGHTING CO. v. CHRIS MAHINDA t/a NYERI TRADE CENTRE, Civil Appeal (Application) No. 148 of 2004.

The circular letter issued by the Registrar on 19th July, 2007, does not contain the name of Mr. Oyoo. This implies that Mr. Oyoo did not have a practicing certificate for 2007 as at 12th July, 2007.

Section 9 of the Advocates Act prescribes that subject to that Act, no person shall be qualified to act as an advocate unless, inter alia, he has in force a practising certificate. Although Mr. Oyoo was given a good seven days to produce to the court a copy of his practicing certificate, he did not do so. On the court file is a copy of a Practising Certificate for the year 2007 certifying that Clitus Oyoo is duly enrolled as an Advocate of the High Court of Kenya and is entitled to practice as such advocate. It is not clear how this document found its way to the court file as it is not attached to any affidavit as would have been expected. Assuming that it has any probative value, it is dated 25th September, 2007. This confirms that Mr. Oyoo had not taken out a certificate by 12th July, 2007, which explains why his name is not on the list circulated by the Registrar vide his circular letter of 19th July, 2007. Consequently, it was improper for Mr. Oyoo to practice as an advocate until he had in force a practicing certificate.

In this matter, Mr. Oyoo filed pleadings, attended court, and obtained some orders. That was improper. I therefore strike out the applications by chamber summons dated 5th April, 2007, and by notice of motion dated 4th May, 2007, with costs to the defendant/respondent. Any orders obtained in those applications are hereby set aside.

Mr. Oyoo will meet the costs of those applications personally.

It is so ordered.

Dated and delivered at Mombasa this 18th day of October, 2007.

L. NJAGI

JUDGE