



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

Misc. Appli. 186 of 2007

KENYA ANTI-CORRUPTION COMMISSION APPLICANT

VERSUS

JUDITH MARILYN OKUNGU 1ST RESPONDENT

DAKANE ABDULAHI ALI 2ND RESPONDENT

NORTHERN CONSTRUCTION COMPANY LTD..... 3RD RESPONDENT

RULING

By a Ruling handed down the 16th October, 2007, this Court rejected the Second and Third Respondents' application to vacate the Preservation Orders granted ex-parte to the Applicant (Kenya Anti-Corruption Commission) under Section 56 of the Anti-Corruption and Economic Crimes Act.

Aggrieved by that Ruling, the Second Respondent, through his Counsel, Mr. Ahmednasir Abdullahi, filed an application "to stay all further proceedings" pending an intended appeal to the Court of Appeal. The application was based on eight grounds of appeal. Of particular importance to this Court, at this time, are the following two grounds.

"(e) The finding of the court and the issues it refused to address are so important that it is both urgent and imperative that the precedent value of the court's decisions should be as short lived as possible. The court made a lot of pretenses that it can make sound law, and must be disabused of the same. This is a matter of national importance. The purport of the said ruling is a gross affront to the justice system in Kenya.

(f) The court has set further hearing of the suit on 23rd October 2007 with the distinct possibility that it will give further injunctive orders."

This application was heard by this Court on 22nd and 23rd October, 2007 when both the Applicant and Respondent completed their respective submissions. At that point, Mr. Ahmednasir applied for, and was granted, an adjournment to present his Reply. When the Court resumed on 1st November, 2007 Mr. Ahmednasir applied to withdraw his application dated 17th October, 2007 which had, by then, been substantially heard by this Court. His main ground was that a similar application was pending before the Court of Appeal, and it would amount to an abuse of process to proceed with the application before this Court.

Mr. Kimani, Counsel for Kenya Anti-Corruption Commission, while not challenging the litigant's right to

withdraw his application, asked the Court to censure the Second Respondent's Counsel for "unfortunate, abusive, and scandalous" comments made against this Court; to prevent further abuse of the process; and to uphold the authority, dignity and integrity of the Court which Mr. Ahmednasir had sought to "shamelessly abuse".

In his reply, Mr. Ahmednasir expressed his "dismay" at Mr. Kimani's submission, stating that these belong to "a different era". He argued that all he had done was to comment "robustly, not weakly" and had no apologies to make.

Of course, every litigant has a right to withdraw his application, subject to an award of costs being made against him. But no litigant has a right to use the Court as a forum, whether through an application, or otherwise, to make disrespectful, abusive, and scandalous statements that go to the root of the Court's authority and dignity. Here, some of the statements made by Mr. Ahmednasir are of such a nature. He called this Court "the gatekeeper" of Kenya Anti-Corruption Commission, accusing it of complete bias in favour of Kenya Anti-Corruption Commission; he rubbished the Court's decision in an undignified manner; and he accused the Court of bias even in future applications relating to Kenya Anti-Corruption Commission. All because, this Court ruled against his client who has been accused of acquiring public property belonging to a school corruptly. Because that Ruling strikes a blow against alleged corrupt conduct, he wants "the precedent value of the Court's decision to be short-lived". That, of course, should not surprise anyone! He said that "the Court made a lot of pretences that it can make sound law, and must be disabused of the same". Because, his client's property, allegedly acquired through corrupt conduct, became the subject of Preservation Orders under Section 56 of the Anti-Corruption and Economic Crimes Act, he called this a matter of "national importance", and "gross affront to the justice system in Kenya". And he has the audacity to tell this Court that he commented "robustly", and that anyone saying otherwise belongs to a "different era"!

In my humble view, Mr. Ahmednasir is completely out of line, disrespectful, and grossly abusive of this Court. As an officer of the Court, he has failed in his duty to maintain respect and decorum, and to conduct himself professionally and with dignity. To say that this Court would rule in similar manner in all future applications relating to Kenya Anti-Corruption Commission is arrogant and contemptuous of this Court. If he disagrees with this Court, all he has to do is to appeal against that decision, and not to take the loss personally. There is nothing "robust" in making wild claims that the justice system has broken down. Indeed, the very rule of law would break down if the Courts did not play their part in keeping watch over public properties. That, Mr. Ahmednasir should know, is the era we live in.

Although, I allow the Second Respondent's application to withdraw the application dated 17th October, 2007, I do so with dismay at the most unfortunate language and conduct exhibited by his Counsel, Mr. Ahmednasir.

The costs of the application dated 17th October, 2007 are awarded to Kenya Anti-Corruption Commission.

Dated and delivered at Nairobi this 8th day of November, 2007

ALNASHIR VISRAM

JUDGE