



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Case 183 of 2005
NAKURU MOLOLINE SERVICES LTD.....PLAINTIFF

VERSUS

- LEONARD NJOROGE MWANGI.....1ST DEFENDANT**
- JOHN M. NJOROGE.....2ND DEFENDANT**
- E. N. KIONDO.....3RD DEFENDANT**
- EDWARD MAINA WAITHUNGURI.....4TH DEFENDANT**
- WILLY GUCHU PETER.....5TH DEFENDANT**

AND

MUNICIPAL COUNCIL OF NAKURU.....APPLICANT

RULING

The applicant filed an application dated 13th February, 2006 by way of a Notice of Motion brought under **Order XLIV Rule 1(1)(b)(2), 4(1)** of the **Civil Procedure Rules** seeking review of consent orders which were recorded between the plaintiff and the defendants and issued on 6th February, 2006. The consent orders read as follows:

- (i) **THAT** the plaintiffs and the defendants do carry out their “*matatu*” transport business independent of each other in the respective open spaces allocated to them by the Town Clerk to the Nakuru Municipal Council in his letter dated 18th day of October 2005.
- (ii) **THAT** the defendants to register their own name not related to **NAKURU MOLOLINE SERVICES LTD** for the purposes of independent identity.

(iii) **THAT** the parties, their servants and agents to observe peace, law and order and avoid abusive language against each other.

(iv) **THAT** the defendants be at liberty to put up their booking office at their own space.

(v) **THAT** the orders herein be served upon:-

(a) Town Clerk Municipal Council Nakuru.

(b) The O.C.S. Nakuru police station.

(c) The O.C.S. Nakuru Railways police station.

(d) The Chairman Transport Licensing Board.

(vi) **THAT** each party to bear their own costs.

The particular part of the consent order which was sought to be reviewed was number (i) as above;

“THAT the plaintiff and the defendants to carry out their “matatu” transport business independent of each other in the respective open spaces allocated to them by the municipal council of Nakuru, with the defendant confining their operations to the space allocated to them by the Town Clerk to the Nakuru Municipal Council in his letter dated 18/10/2005”.

The application was made on the grounds that the applicant was aggrieved by the said consent order because the letter dated 18/10/2005 had been revoked vide another one dated 17/11/2005 and the defendants did not bring that fact to the court’s attention when they were recording the consent. The applicant was not a party to these proceedings at that time and neither is it a party to date as it has not applied to be joined as one.

The background to the present application is important and briefly stated it is as follows: The plaintiff as a company that brings together several public service vehicles commonly known as “*matatu*” operators sued the defendants seeking orders to restrain them from using the plaintiff’s stickers on their “*matatus*” or from using the designated booking office of the plaintiff at Nakuru. The court heard the said application and dismissed the same vide a ruling dated 21/10/2005. Thereafter the parties continued to carry on their respective operations, separately but in an unofficial manner. Prior to the delivery of the said ruling the defendants had applied to the municipal council of Nakuru (the applicant) for allocation of parking space for their “*matatus*”. On 18/10/2005 the applicant’s Town Clerk wrote to the defendants as follows:-

“RE: ALLOCATION OF PARKING.

Reference is made to your application dated 5th September, 2005 regarding the above mentioned issue.

You have been authorised to use 1.No. of parking between the 2 NK SACCO and Mololine office on temporary basis until your application is considered by the council.

The use of this 1No. parking is subject to the following conditions:-

- 1. You shall adhere to all the council’s By-laws and regulations governing omnibus station.***
- 2. You will not use the same trade mark as mololine.***
- 3. Your matatu crew with adhere to all TLB requirements.***

Note that breach of any of the above shall cause the withdrawal of this letter of comfort without any

reference to you.

Yours faithfully,

(Signed)

KANGETHE J.W.

TOWN CLERK

Subsequently, the applicant wrote to the defendants a letter dated 17/11/2005 which was as follows:-

“Dear Sirs,

ALLOCATION OF PARKING

Please refer to my letter Ref. GP/5/2005/KJW/ZM dated 18th October, 2005 and the accident that occurred today whereby there arose fracas due to the 1No. parking base allocated to you. The accident caused a breach of peace and the police and other security agencies were called to contain peace.

An urgent meeting was called to discuss the issue and resolved that the parking allocated in the above letter be relocated at the main stage where it's more spacious to operate from and to reduce conflict that is likely to occur again in the stage.

Please note that the conditions specified in my letter above still stands.

Yours faithfully

H.K. KIMEMIA

FOR: TOWN CLERK

The defendants opposed the decision of the applicant and responded to the aforesaid letter vide their own dated 1/12/2005. They insisted on continuing to use the first parking space as allocated to them by the applicant in its letter of 18/10/2005. From the affidavits filed by the plaintiff and defendants, it is clear that there has been serious business rivalry between them and that rivalry is centred on two main issues namely, the business name which the defendants incorporated after they split from the plaintiff and use of the parking space in Nakuru for purposes of picking up passengers.

It is also clear from the affidavits filed by the plaintiff and the defendants that the plaintiff was well aware of both the letters dated 18/10/2005 and 17/11/2005 as at the time of recording the consent orders on 6/2/2006. The plaintiff's representatives and the defendants and their respective advocates took a considerable period to negotiate the said consent and they all signed the original hand written consent in the court file.

Two days after the applicant filed its application the plaintiff also filed an application seeking to commence contempt of court proceedings against the defendants on the grounds that the defendants were using abusive and vulgar language against the plaintiff and that they were carrying on their “*matatu*” business in the names **MOLOLINE GROUP** when the consent order required them to register a company or a business name independent and unrelated to **NAKURU MOLOLINE SERVICES LTD.**

The plaintiff did not raise any issue against the defendants relating to the parking space which they were operating from. At that time the defendants were using the parking space allocated to them by the applicant in its letter of 18/10/2005.

In his replying affidavit to the affidavit sworn by the applicant's Town Clerk in support of its application, the first defendant deposed that the applicant was working in cahoots with the chairman of the plaintiff to frustrate the operations of the defendants' vehicles and/or disadvantage the defendant by giving them parking space which was completely unsuitable for the defendants' business. He further deposed that the defendants were operating in a space that was 120 feet away from the plaintiffs' booking office and that had created healthy competition between the plaintiff's vehicles and those of the defendants which had the effect of lowering fares charged to commuters.

The applicant did not substantiate how it was aggrieved by the consent orders that were recorded by the parties herein. The plaintiff and the defendants were the antagonists in this matter and in crafting their exhaustive consent orders which finalised the suit must have taken into consideration all the relevant matters in issue. According to the holding of Ringera J (as he then was) in **GALOT & 5 OTHERS VS KENYA NATIONAL CAPITAL CORPORATION [2002]1 KLR** an aggrieved person is one whose legal rights and other interests are adversely affected by a given order or decree. In that regard, I do not see how the applicant can be an aggrieved person in this dispute which was essentially between the plaintiff and the defendants. No legal rights or interests of the applicant were affected by the consent which was recorded by the plaintiffs and the defendants. During the discussion and the working out of the said consent, there was meeting of minds and both parties, who are business rivals, intended that the defendants operate from that parking space between the 2NK SACCO and the plaintiffs' office and not at the main stage. The applicant's contention in making the review application is that there is likely to be chaos and disorder unless the review as sought is effected. I believe there are law enforcement officers who will not hesitate to do their work if any of the parties breaches the law. I hold that the applicant is not an aggrieved person and therefore lacks capacity to apply for a review of the consent orders which the parties in dispute freely recorded on 6th February 2006. I dismiss the application with costs to the plaintiff and the defendants.

DATED, SIGNED and DELIVERED at Nakuru this 6th day of June, 2006.

D. MUSINGA

JUDGE

6/6/2006

Ruling delivered in open court in the presence of Mr. Simiyu holding brief for Mr. Karanja for the applicant, Mr. Mwangi for the plaintiff and Mr. Njoroge for the defendant.

D. MUSINGA

JUDGE

6/6/2006