



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

Civil Suit 15 of 2006

PATRICK SAMUEL KIBUCHI PLAINTIFF

VERSUS

ELIZABETH WANJIKU GITAGIA..... DEFENDANT

RULING

By chamber summons dated 26.06.06 and filed on 27.06.06 stated to be brought under sections 3A and 63 (e) of the Civil Procedure Act (Cap.21), Order XXXIX rules 1, 2 and 3 of the Civil Procedure Rules and section 70 of the Constitution of Kenya, the plaintiff prayed for the various orders listed therein. When the application came up for hearing before me on 13.07.06, the plaintiff/applicant sought interlocutory prayers 4 and 5 which are in the following terms:

'4. For a declaration that there is no legal impediment in regard to the relationship between the plaintiff/applicant and the defendant/respondent that would stop the plaintiff/applicant from being legally married to his fiance' on Saturday 29th July 2006.

5. That the Defendant, her agents, her father Leonard Gitagia Boro, her mother Loise Nduta Gitagia and her two sisters Susan Wanjira Gitagia and Roslyn Wambui Gitagia, be restrained by way of an order of this court from being within the compound of Nairobi Baptist Church located along Ngong Road in Nairobi and opposite the City Mortuary between the hours of 6.00 a.m. to 4.00 p.m. on Saturday 29th July 2006.'

This Ruling relates to the aforesaid prayers.

The court file establishes that there is a pending suit by the plaintiff seeking, *inter alia*, a similar declaration to the one sought vide prayer 4 in the application under consideration and also that the suit seeks a similar injunction to the one sought vide prayer 5 in the same application now under consideration, but on permanent basis.

The plaintiff/applicant, an Advocate of the High Court of Kenya appeared in person at the hearing of the application while the defendant/respondent was represented by learned counsel, Mrs P.M. Ndungu.

The grounds upon which the application is based are:-

- a) That the plaintiff/applicant and defendant/respondent had a relationship as a boyfriend and girlfriend which commenced on Sunday 18.04.2000.
- b) That the relationship was effectively terminated on 02.04.05 by the plaintiff for personal and confidential reasons.
- c) That pursuant to attempts by the defendant to re-start the relationship thereafter in July and August 2005, the plaintiff reiterated the termination on 20.09.05 by way of e-mail communication from the plaintiff/applicant to the defendant/respondent.
- d) That subsequent thereto from 02.04.05, the plaintiff commenced another relationship, which has developed to an advanced stage, and plans are underway for marital union scheduled for Saturday 29.07.06 at the Nairobi Baptist Church, along Ngong Road in Nairobi Province of the Republic of Kenya.
- e) That since the defendant/respondent learned of the plaintiff's wedding plans in February 2006, the defendant/respondent has stopped at nothing short of direct conflict, to ensure that the proposed wedding scheduled for 29.07.06 does not take off.
- f) That the defendant and her immediate family have made several representations to the pastors at the plaintiff's church, as well as to his relatives and friends, that the marriage should not be allowed to take place.
- g) That the defendant/respondent plans to stop the scheduled wedding mid-way on Saturday 29.07.06 by production of an injunction order barring the completion of the ceremony.
- h) That upon receipt of the information the plaintiff/applicant has filed this application without undue delay.
- i) That only an order of this court can forestall what would be described as a malicious and vindictive action by the defendant.

The application is supported by the plaintiff's/applicant's affidavit sworn on 26.06.06

The defendant/respondent swore a replying affidavit on 04.07.06 and filed the same day denying many of the plaintiff's/applicant's averments. Among other things, the defendant/respondent described the plaintiff's/applicant's case as raising no cause of action against her, an abuse of the court process and that she will raise an objection at the hearing of the case.

In response to the defendant's/respondent's replying affidavit, the plaintiff/applicant swore a supplementary affidavit on 11.07.06 and filed it the same day, basically refuting the defendant's/respondent's counter-averments and reiterating his own earlier averments.

The contents of the affidavits alluded to above were essentially reiterated by the parties at the hearing of the application now under consideration.

I have duly considered the arguments and counter arguments of the parties.

For purposes of this Ruling, I shall concentrate on the following salient points.

The parties basically agree that they had a relationship as boyfriend and girlfriend which subsequently went sour. According to the applicant, the relationship started on 18.04.2000 but he terminated it on 02.04.05 for what he described as personal and confidential reasons. The respondent admits there was such a relationship which ended but differs as to the period it lasted. She puts its duration as being from 16.04.2000 to September, 2005 and that even after the relationship ended, she and the applicant still remained close friends until December, 2005. The two former friends are, therefore, unable to agree on the duration of their former friendship, which is now clearly history.

Viar paragraph 7 of the plaintiff's/applicant's supporting affidavit, he deposes:

'7. That at no time during the continuance of the relationship did I marry the defendant/respondent, live with or get into a common law, traditional or any other iota or semblance of marriage whether imagined or real as envisaged by the Laws of the Republic of Kenya.'

The defendant's/respondent's answer is at paragraph 9 of her replying affidavit which deposes:

'9. That there was no marriage between the plaintiff and myself save for the promise as detailed at paragraph 4 hereof.'

For the record, paragraph 4 of the defendant's/respondent's replying affidavit is to the effect that the plaintiff/applicant had promised to marry her and that he formally engaged her on 10.03.05. For his part, the applicant denies vide paragraph 5 of his supplementary affidavit that he promised to marry the respondent and counters that all he did on 10.03.05 was to propose an intention of marriage to the defendant/respondent which she accepted but the engagement never lasted more than 3 weeks before the plaintiff/applicant called it off.

Another of the plaintiff's/applicant's complaints is that the defendant/respondent took to harassing him after she learnt of his intention to marry someone else on Saturday 29.07.06 and that the respondent's harassment forced him (applicant) to lodge an official complaint with the police; that the defendant/respondent was summoned by the police following the plaintiff's/applicant's complaint and that the harassment stopped after the defendant/respondent was so summoned. The defendant/respondent denies harassing the plaintiff/applicant and counters that it is the plaintiff/applicant who has been harassing her. In the latter regard, she deposes vide paragraph 15 of her replying affidavit:

'15. That it is the plaintiff who has harassed me through police and his own investigators. '

Vide paragraph 28 of his supporting affidavit, the plaintiff/applicant deposes:

'28. That I have received reliable information which I verily believe to be true, that the defendant wishes to file an application on or about Friday 28th July 2006, seeking an injunction to stop me from wedding on Saturday 29th July 2006.'

Among the defendant's/respondent's counter-depositions is paragraph 29 of her replying affidavit which states:

'29. That the plaintiff's (sic) has come to court in a bit (sic) to preempts (sic) my claim for damages for breach of promise to marry in that after the engagement we agreed to celebrate our wedding on 17th December 2005.'

The plaintiff/applicant submitted before this court that paragraph 29 of the defendant's/respondent's replying affidavit corroborates the information he had received that the defendant/respondent was planning to disrupt his wedding planned for 29.07.06. Paragraph 29 of the defendant's/respondent's replying affidavit seems to corroborate the plaintiff's/applicant's apprehension that the defendant/respondent may be up to some mischief.

At paragraph 27 of his supplementary affidavit, the plaintiff/applicant deposes that he had been reliably informed that the respondent is likely to cause a scene on the wedding day and at paragraph 30 he deposes:

'30. That it is a well established and sad position in this country, that ex-girlfriends are the bane of any bachelor at his wedding ceremony as any scene mars what would other (sic) be an exquisite ceremony; and the plaintiff requests the court to grant the prayers sought.'

The ultimate objective of the plaintiff's/applicant's application seems to be reflected in paragraph 31 of his supporting affidavit, namely:

'31. I have filed this application in order that the defendant be given a fair opportunity, to present to this court any legal reasons why the plaintiff should not be joined in holy matrimony to his fiance' on Saturday 29th July 2006.'

In defendant's/applicant's counsel's submissions in opposition to the application, she said the defendant/respondent was present in court, just in case the court decided to hear the plaintiff's/applicant's suit straightaway since the chamber summons application, *inter alia*, sought hearing of the suit on priority basis. This court did not deal with the prayer for hearing the main suit on priority basis but confined itself to the temporary orders sought vide prayers 4 and 5 in the chamber summons. It was the defendant's/respondent's case that the plaintiff's/applicant's application has no merit and that it should be dismissed.

It emerges from the evidence available to court regarding the application under consideration that the friendship between the plaintiff/applicant and defendant/respondent has ended on a sour note. This is common ground. The parties are also on common ground that there has been no marriage of any description between them. It is clear from paragraph 29 of the defendant's/respondents replying affidavit that she has in her contemplation the possibility of filing suit against the plaintiff/applicant herein for alleged breach of promise to marry her. That is a cause of action open to her and the plaintiff/applicant made it clear to this court that he is prepared to face the defendant/respondent in court over such suit if filed.

Plaintiff/applicant also made it clear that what he is trying to prevent through the present application is an ugly scene including possible breach of peace in the event that the defendant/respondent attempts to disrupt his wedding to his fiance', Esther Wanjiku Kung'u on 29.07.06. The plaintiff/applicant makes reference vide paragraph 30 of his supplementary affidavit to past episodes where wedding ceremonies have been interrupted at the eleventh hour and describes such scenes as sad. I take judicial notice under section 60 (1) (o) of the Evidence Act (Cap. 80) that such episodes are matters of local notoriety, which have at times resulted in ugly scenes including breach of peace. The plaintiff/applicant says he is apprehensive, having regard to the evidence availed to this court that the defendant/respondent is likely to interrupt his wedding on 29.07.06 and asks this court to relieve him of the strain of having to look over his shoulder the whole day keeping an eye out for the defendant/respondent. The defendant/respondent did not avail to this court any evidence that she has lawful cause for stopping the plaintiff/applicant from marrying his fiance', Esther Wanjiku Kung'u on 29.07.06. Her case is that the plaintiff/applicant breached a promise to marry her. The remedy to the alleged breach lies elsewhere, not in stopping the plaintiff/applicant from marrying someone else. I take cognizance of the fact that there is now no love lost between the parties since the break-up of their romantic relationship. The temptation for the defendant/respondent to interrupt the plaintiff's/applicant's wedding on 29.07.06 or to cause the wedding to be interrupted cannot be ruled out. On the evidence available, the plaintiff's/applicant's apprehension cannot be said to be baseless.

This court has a duty to pre-empt the mischief contemplated by the plaintiff/applicant and I am persuaded that the court should issue orders to prevent such contemplated mischief. Accordingly, I make the following interlocutory orders:-

- a) I grant prayer 4 in the chamber summons dated 26.06.06.
- b) Arising from the declaration at order (a) above, I further declare that neither the defendant/respondent nor her agents or relatives have any lawful cause to stop the plaintiff applicant from marrying his fiance', Esther Wanjiku Kung'u on 29.07.06 and the defendant/respondent, her agents or relatives howsoever described are hereby restrained from interfering with or interrupting the plaintiff's/applicant's marriage to his aforesaid fiance' on 29.07.06.

Orders accordingly.

Delivered at Nairobi 24th day of July, 2006.

B.P. KUBO

JUDGE