



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Civ Appli 651 of 2004

OWINO OKEYO & COMPANY ADVOCATES
APPLICANT

VERSUS

MIKE MAINA 1ST
RESPONDENT

MUTHITHI INVESTMENTS COMPANY LTD 2ND
RESPONDENT

RULING

This is an application for review of the Orders of this Court made the 7th December, 2005. It is brought under Order 44 Rules 1 and 2 of the Civil Procedure Rules.

On 7th December, 2005 this Court entered Judgment in favour of the Respondent law firm for Kshs.153,182.50 together with interest at 9% per annum from 1st September, 2001.

On 4th May, 2006 the Applicants sought to stay execution of that Order on the ground that the decree was made on behalf of a firm which had been dissolved and therefore incapable of sustaining legal proceedings. Indeed, the Respondent law firm was dissolved by an Order of this Court (Kuloba, J) on 24th June, 2003. All the same, the application for stay was disallowed (Kihara Kariuki, J) on 7th June, 2006.

Undaunted by that Ruling, the Applicants are now before this Court again to “review” my Ruling of 7th December, 2005 on the same ground they argued before the Hon. Kihara Kariuki, J that the Respondent law firm had been dissolved at the time Judgment was entered in their favour, and accordingly the firm lacked capacity to participate in these proceedings. This, the Applicants argued, was a “new and important matter” and/or “sufficient reason” to invoke Order 44.

First, and foremost, in my view there is nothing “new” here. The Applicants were aware all along when they argued their case before me, and subsequently before Kihara Kariuki, J that the Respondent law firm had indeed been dissolved. Accordingly, that is certainly not a ground for invoking Order 44. However, the words “or for any other sufficient reason” in Order 44 enlarges the scope of review applications, and in my view allows the Applicants before me to invoke that procedure to Review the Orders of this Court.

The issue before me is whether the fact that the Respondent law firm had been “dissolved” at the time Judgment was entered, is sufficient reason to review and set aside that Judgment. In other words, were the proceedings instituted by the Respondent law firm against its client for the recovery of its fees a nullity by reason of its dissolution?

Section 42 of the Partnerships Act, Cap 29 states as follows:

“After the dissolution of a Partnership, the authority for each partner to bind the firm and the other rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind-up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise...”

I would concur with the view expressed by Azangalala, J (*Owino Okeya & Company vs Fuelex Kenya Limited*, HCCC 382 of 2004, Milimani) that the rights and obligations of partners continue notwithstanding the dissolution of the partnership to complete transactions begun but not finished at the time of the dissolution. Order 29 Rule 1 of the Civil Procedure Rules would seem to acknowledge this position. It states:

“Any two or more persons claiming or being liable as partners and carrying on business in Kenya may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were at the time of the accruing of the cause of action, partners in such a firm to be furnished and verified in such manner as the court may direct.”

This rule allows partners to sue and be sued in the name of the firm at the time the cause of action accrued, notwithstanding the dissolution.

It is not in dispute that the partnership existed at the time the cause of action accrued. The Bill of Costs was taxed in the name of the firm. The application for Judgment for the sum in the Certificate of Taxation was lodged in the name of the firm, as was the application for execution. As Justice Kihara Kariuki observed no objection was raised, either during taxation or before this Court, that the firm for which costs were sought had been dissolved. And what is most instructive to note is that the Applicants are not denying the liability to pay the costs. They know they owe the legal fees, and must pay the same. However, they are attempting to find every conceivable technical reason not to pay the same. It would be most unfortunate if the Court were to countenance such action.

Accordingly, and for reasons cited, the application dated 28th August, 2006 is dismissed with costs, and Orders of stay previously granted are hereby vacated.

Dated and delivered at Nairobi this 17th day of October, 2006.

ALNASHIR VISRAM

JUDGE