

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURTS, NAIROBI**

HCCC NO.59 OF 2005

MUGOYA CONSTRUCTION &

ENGINEERING LTD.....PLAINTIFF

V E R S U S

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES (NSSF & ANOTHER).....DEFENDANT

R U L I N G

The plaintiff herein filed an application by a Notice of Motion dated 18th April, 2005, and sought from the court, inter alia, that leave be granted to initiate contempt proceedings against the 1st defendant's principal officers, i.e. the managing trustee, the company secretary and the chairman, and against the 2nd defendant's directors. The applicant further seeks some restraining orders against the defendants. The application is made under the provisions of S. 5 of the Judicature Act, Ss. 3A and 63 (c) and (e) of the Civil Procedure Act, O. XXXIX Rules 12, 2A and 3 and 5 of the Civil Procedure Rules, and all enabling provisions of the law.

The application is based on the ground that on 15th April, 2005, the defendant's employees, agents or servants visited the site premises, the subject of the suit herein, posted more guards and placed locks on the gates to the premises. When this matter came to court on 19th April, 2005, it was stood over for hearing the following day. On that date, the court visited the site along with all the parties' counsel, after which the proceedings resumed in court and all the counsel made their submissions. Mr. King'ara made it clear, and I thought it was a very good gesture, that the applicants had no intention of pursuing the prayer for initiating contempt proceedings provided that they could get status quo.

It is evident from the court record that when this matter first came to court on 15th February, 2005, the Hon. Justice Azangalala made an order in these words –

“In the interests of justice and for what it is worth, I order that the STATUS QUO obtaining as of today be maintained pending the hearing of the 1st defendant's application on 24/2/05 before any judge.”

On 24th February, 2005, the matter came back before Justice Azangalala and by consent, the application was fixed for hearing on 4/3/05. The judge also ordered that the status quo be maintained until that date. For reasons recorded by Justice Azangalala, the matter did not proceed on that date. The matter was then referred to Waweru Judge who ordered that the matter be heard on 14th March, 2005 and extended the interim order for maintenance of status quo to 14/03/05. The matter was accordingly heard on that day before this court, and the ruling was reserved for delivery on 21.04.05. This court also ordered that the status quo be maintained till that day. Before the dawn of that day, the application now before the court was filed.

The problem that we have grapple with is that status quo has not been adequately defined. In the absence of a clear definition, it can become a very unruly horse which, if not properly bridled, can get out of control. The issue of the 1st defendants having brought into the site more security guards is not anything new. From the record, it seems that they have been maintaining security on that site since January, 2005. That was the position as at 15th February, 2005 when the court ordered that the status quo be maintained.

Beefing up the security is not, to my mind, a breach of that status quo.

It is also apparent from the records as well as from the court's visit to the site that all the way from November/December, 2004 till last week, the plaintiff's employees have been having access into and out of the site without let or hindrance. The plaintiffs have been in control of their site offices as well the control of their equipment and machinery. That was the status quo that ought to be observed. The plaintiff has its records, presumably, in the site office and such records must mean everything to them. I therefore order that the plaintiff and its employees be allowed access to their site office and their equipment on the site until further orders.

Parties be at liberty to apply.

Dated and delivered at Nairobi this 22nd day of April 2005

L. NJAGI

JUDGE