



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**CIVIL APPEAL 106 OF 2003**

**JOHN WAGACHA THUO.....PLAINTIFF**

**VERSUS**

**JOSEPH MUYA.....1ST DEFENDANT**

**SAMUEL KIMOTHO.....2ND DEFENDANT**

**RULING**

The Application has been brought through Chamber Summons under Order L. R. 1 of the Civil Procedure Rules and **Section 3 (A) of the Civil Procedure Act**. The Application seeks the following Orders: (a) That the status quo obtaining in this Suit before the Suit commencing be interparties (the Applicant's Counsel must have meant the word "interpreted") by the Court. (b) That the costs of this application be in the Cause.

The application is based on the following grounds:

- (a) That each of the parties herein interprets the status quo differently.*
- (b) That the different interpretation by Counsels has created total confusion.*
- (c) That in the interest of justice, the Honourable Court should clearly state which status quo obtains at the commencement of his Suit.*

During the hearing of the application, the Applicant was represented by Ms **Nancy Njoroge** while the Respondent was represented by Mr. Olola. According to Ms Njoroge, the subject matter is the Ruling of Hon. Justice Visram dated 30th July, 2003 which ended with the following words:

***"The parties shall maintain the status quo obtaining before the matters leading to the Suit in the Lower Court arose pending the hearing and determination of this appeal."***

Besides the above, Ms Njoroge submitted that her client was managing the Children's Home before the matter went to the Lower Court. However, when there was an attempt to bring the new manager, that prompted the Applicant to come to Court. She conceded that it is the Respondent who is now managing the premises. Apart from the above, Ms Njoroge has also submitted that the issue of confusion should not arise because the Orders of the Lower Court and High Court are very clear.

On the other hand, Mr. Olola has opposed the application while relying on the grounds of opposition.

The same are as follows:

**(1) The Application is not made bona fide.**

**(2) The Application is misconceived and bad in law, and the same ought to be dismissed with costs.**

**(3) There are no sufficient or any grounds for the Court to interpret the status quo as the Honourable Justice Visram's Ruling of 30th July, 2003 is clear and unambiguous. There is no sufficient reason why the Court should exercise its discretion in the Applicant's favour.**

**(4) The Application is devoid of merit, frivolous and an abuse of the Court process as the Applicant has only filed the Application after failing to take over the premises through a case in the Children's Court being Nakuru Chief Magistrate P & C No. 181 of 2003.**

In addition to the above grounds of opposition, Mr. Olola referred the Court to **Order 50** which he stated that all the applications shall be brought through Notice of Motion. Apart from the above, Mr. Olola also referred the Court to **Order 50 Rule 15 (2)** of the **Civil Procedure Rules** which requires that every Motion and summons shall bear the words:

***"If any party served has not appeared...the Court may make an order as may be expedient."***

Mr. Olola is of the considered view that the above are on mandatory terms and yet they do **not** appear in this application. Secondly, he also submitted that there are no different interpretations of the Order and that is why the Applicant has failed to try and enforce the Order. In addition to the above, Mr. Olola further submitted that the Applicant had been sacked long before he filed the Suit – and that nothing would have been easier than for Hon. Justice Visram to state that the Applicant should be reinstated to manage the Children's Home.

In conclusion, Mr. Olola submitted that the application has been brought after an inordinate delay. He pointed out that the application was made after a period of about 10 months after the Ruling of Hon. Justice Visram. This Court has carefully perused the submissions by the two learned Counsels. Besides the above, I have also perused the Ruling by Hon. Justice Visram that was delivered on 30th July, 2003. The Ruling clearly states that the parties should maintain the status quo ante obtaining before the matters leading to the Suit in the Lower Court. Apart from the above, I have also gone through the Plaint carefully.

*Paragraphs (6) and (7)* of the said Plaint clearly state that the Applicant had been locked out from the Suit premises and hence the operations of the home. That was clearly before the Suit was instituted by the Applicant. Naturally, if Hon. Justice Visram had wanted to reinstate him on the Suit premises nothing would have been easier for him than to make the necessary Orders. Therefore, status quo under the circumstances can only mean that the person(s) who took over the management of the premises should proceed to operate the same till the matter is determined. In my mind, the Ruling of the Hon. Judge is explicit and has no ambiguity.

*Lastly*, the Court concedes that the Applicant delayed by 10 months to bring his application. Given the nature of the dispute the delay was inordinate and unreasonable. From the above analysis, it is apparent that the application is misconceived, bad in law and has no merits whatsoever. Due to the above, I hereby dismiss the application with costs.

Those are the Orders of the Court.

**MUGA APONDI**

**JUDGE**

**Ruling read, signed and delivered in open Court in the presence of Mr. Olola for Defendant/Respondent.**

**Mr. Gitonga for Ms Njoroge for Applicant.**

**MUGA APONDI**

**JUDGE**

**28TH SEPTEMBER, 2005**