



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 76 of 2002

MONICA WAMBUI GITHAIGA Legal Representative of the Estate

of Gakuru s/o Karutha).....1ST PLAINTIFF/RESPONDENT

WILLIAM KAMAU BORA.....2ND PLAINTIFF/RESPONDENT

NJERI KABUI.....3RD PLAINTIFF/RESPONDENT

STEPHEN WAGUCHA WAMARU.....4TH PLAINTIFF/RESPONDENT

KAMAU WAGUCHA.....5TH PLAINTIFF/RESPONDENT

GATHONI KANYOI.....6TH PLAINTIFF/RESPONDENT

Versus

JOSEPH NDERITU WACHIRA.....1ST DEFENDANT/APPLICANT

HARRISON WAWERU NDIRANGU.....2ND DEFENDANT/APPLICANT

CYRUS KING'ORI GITAHU.....3RD DEFENDANT/APPLICANT

RULING

On the 8th day of November 2005 what was before me for hearing, according to this court's Civil Registry note dated 16th February 2005, was Chamber Summons dated 10th September 2003. Mr. Ng'ang'a, Counsel for the Respondent raised objection to the hearing of that application pointing out that the applicants have not complied with this court's order dated 20th May 2004. Mr. Wachira, Counsel for the Applicants did not agree as he insisted that there had been full compliance. That therefore takes us back to the court order dated 20th May 2004 as made by my learned sister Lady Justice Okwengu. It stated:

“Defendant to take a date for hearing of his application to amend the defence and prosecute the same within 21 days from the date hereof.”

Counting from 21st May 2004 when did the 21 days expire? I do not have to be exact but there should be no doubt that by 30th June 2004, the 21 days had long expired and when the Applicant's Counsel was in

the Court Registry on 2nd June 2004 taking the date 30th June 2004 for hearing of that application he ought to have known that he was thereby not complying with the court order dated 20th May 2004. That court order is clear. It required the Applicant to do everything concerning the Chamber Summons dated 10th September 2003 within 21 days. That is to take a hearing date for the application and prosecute the same within 21 days and not otherwise.

Had that application been heard on 30th June 2004 therefore, that will not have been in compliance with the court order dated 20th May 2004 because 30th June 2004 was a date outside the prescribed 21 days. When that application was not heard on 30th June 2004, the order "S.O.G.", made by the court on that day without the parties having drawn the attention of the court to the court's order dated 20th May 2004, did not in any way affect the validity of the court's order dated 20th May 2004. If anything, it was the latter order which had no effect as the Chamber Summons dated 10th September 2003 ought not to have been entertained on 30th June 2004 had the court been properly informed by the parties.

Proceedings which came to take place after 30th June 2004 therefore made the position worse for the Applicants.

It follows that Chamber Summons dated 10th September 2003 did not validly subsist to be competently before me for hearing on 8th November 2005 and Mr. Ng'ang'a's objection is hereby upheld with costs of 8th and 14th November 2005 to the Respondents, in any event.

It ought to be hearing of the main suit and no more hearing of Chamber Summons dated 10th September 2003.

Dated this 14th day of November 2005.

J. M. KHAMONI

JUDGE