

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

HCCC CIVIL SUIT NUMBER 15 OF 2002

GIKANDI NGIBUINIPLAINTIFF

VERSUS

1. EAGLE AVIATION LIMITED

2. ETHIOPIAN AIRLINES S.C.....DEFENDANTS

R U L I N G

On 15th January, 2002 the plaintiff filed this application claiming declaration that he was entitled to hold certain money in his hands pending the payment of his legal fees (Applicant/Plaintiff is an advocate) and that there be an order staying proceedings and execution under HCC No. 833/1999.

In his supporting affidavit he set out various suits where he is entitled to fees. He also annexed bills for taxation between Client/Advocate. He claimed that there was a threat of garnishee proceedings against him by second Defendant against some money deposited by the first Defendant with him. He stated that the fees amount to about 7 million and sought the orders pending the finalization of the taxation to ascertain his entitlement.

On 7th march, 2002 the 2nd Defendant applied for orders that orders granted to the Plaintiff on 19th February, 2002 be set aside. And that the plaintiff's claim in the plaint filed herein was res judicata and an abuse of court process. It is said that on 18th October, 2001 in HCC No. 833/1999 Garnishee orders were made against the Plaintiff. This suit was filed on 15th January, 2002 when that order was already issued in HCC 833 /1999.

I have perused the material laid before the court. I am bound to conclude that when this suit was filed the issues regarding Garnishee proceedings against the Plaintiff had become res judicata a between second Defendant and the plaintiff.

I therefore find that the plaint discloses no cause of action between Plaintiff and Second Defendant and the same is struck out with costs. Orders granted ex parte under Chamber Summons dated the 15th January, 2001 are hereby set aside. The application has no merit and the same is hereby dismissed.

The applicant shall pay the costs of the application.

Dated this 15th day of July, 2004.

JOYCE KHAMINWA

JUDGE