



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL SUIT 338 OF 2004
KENYA MEAT COMMISSION (IN RECEIVERSHIP) & ANOTHER.....
....PLAINTIFF

- V E R S U S -

DAVID WAMBUA MASIKA.....DEFENDANT

RULING ON THE INTERPRETATION OF THE ORDERS OF 5TH OCTOBER, 2004

On 3/11/03, the parties returned to this court seeking interpretation of the orders granted on 5/10/04, in light of the following facts:

On the 24.6.04 the Plaintiffs- Kenya Meat Commission (in receivership) and National Bank of Kenya, applied, by way of Chamber summons, for four orders, [the relevant one being prayer No. 2] against David Wambua Masika and 16 others] Prayer No. 2 was as under:

“That the court restrain the Defendants and/or any of them jointly and/or severally from taking control and/or interfering in any way with the assets, property and/or affairs of the First Plaintiff pending the hearing and determination of this application.”

The application was heard **exparte**, and the above prayer granted by this court, and the Order was extracted and issued by this court on 1.7.04 in the following terms:

“IT IS HEREBY ORDERED that the Defendants be and are hereby restrained and/or any of them jointly and/or severally from taking control and/or interfering in any way with the assets, property and/or affairs of the 1st Plaintiff pending the hearing and determination of this application INTERPARTES on 20.7.2004.”

On 20.7.04, the hearing could not proceed as the Defendants failed to appear in court and they were not represented.

In the interest of justice, this court ruled that the application be mentioned on 17.9.2004 to allow the Defendants to procure the services of a legal counsel. The interim orders herein above were extended till then – i.e. 17.9.2004.

On 17.9.2004, the Defendants/Respondents had appointed Mr. Wanjau, Advocate, to represent them, and since he had just come on record, the hearing was, by consent of the counsels for both parties, agreed that the matter be mentioned again on 5.10.2004. The above interim orders were extended till then.

On 5/10/04, the Defendants had added another counsel to their representation – Mr. B.M. Musau Advocates. And by consent, the counsels for both sides agreed to pick a date from the Registry for the hearing of the application. Once again, the interim orders were extended till then.

It is important to clarify the extension for the interim orders on the 5.10.04. The interim orders were extended till (**then**) the date the parties were to from the Registry.

Between 5.10.04 and the 3.11.04 when the counsels for both sides appeared before me, both sides had filed other applications, but relating to the same matter.

(a) The Defendants – three applications (all of them *ex parte*) on 15.10.04 which was scheduled to be heard **inter partes** on 26.10.04.

On the 26.10.04, at the *inter partes* hearing of the defendant's applications dated 15.10.04 but filed on 18.10.04, the applications could not be heard as much time was consumed in submissions on Preliminary Objections raised by Mr. Rachuonyo – for the Plaintiffs. Accordingly, a date – 10.11.04 was fixed, by consent of the parties, to hear the 3 applications of the Defendants.

I need to stress that the hearing on 26.10.04, and the date of 10.11.04 had nothing to do with the application dated 24.6.04. These two dates were confined to the Defendants' three applications dated 15.10.04 and filed on 18.10.04.

At the **inter partes** hearing of 26.10.04 neither party raised indirectly or directly the issue of the interim orders, referred to herein above. Accordingly, the issue of their extension or lapsing was not considered by this court either way. That application was clearly not the one before the court that day.

(b) On 29.10.04- the Plaintiffs filed under a Certificate of Urgency an application – which was heard [technically *ex parte*, but the Defendants were present] by Waweru . on 2.11.04, who referred the matter to me for hearing and interpretation of the Orders of 5.10.04, on the 3.11.04. In other words, this application dated 29.10.04 has yet to be heard **inter partes**.

I have gone to the above detail to pave the way for a clear position of what was argued and brought before me on 3.11.04.

Between 26.10.04 and 2.11.04 the Defendants' apparently on the advice for their counsels, tried to move in and take over the management and control of the affairs of the 1st Plaintiff – Kenya Meat Commission – on the basis that since the interim orders had not been extended on 26.10.04 the same had lapsed. The ensuing confusion in the efforts of the Defendants to physically and forcibly take over the control and management of the 1st Plaintiff, by evicting the Plaintiffs, is in the Public domain and that was simply because the Plaintiffs maintained that the interim orders were still in force.

Are the interim orders still in force or have they lapsed? That is why the parties came back to this court on 3.11.04.

After careful consideration of the facts and the circumstances herein detailed earlier, I have no doubt in my mind, both as a matter of fact and law, that the interim orders are still in force and must be observed by the Defendants on pain of penal sanctions if flouted. The reasons are very simple for those who care for law and order:

(a) The interim orders of this court granted *ex parte* on 24.6.04, have never lapsed or been vacated by this court. They have, to the contrary been extended pending the *inter partes* hearing and determination of the application dated 24.6.04 which to date, has not been heard.

(b) On the 5.10.04, those interim orders were, by consent of the parties, modified when the parties [both the Plaintiffs and the Defendants] agreed to pick a date from the Registry for the hearing of the application, and the interim orders were extended till then- that is till the *inter partes* hearing and

determination of the application.

(c) It is dishonest of the defendants and their counsels, to hold that the orders lapsed because the same were not extended on the 26.10.04. As stated earlier, the 26.10.04 was not a hearing date for the application dated 24.6.04. That date was for the hearing of the three applications filed by the Defendants on 18.10.04.

(d) Under the extended orders of 5.10.04, both parties – together- were to pick a date from the Registry for the hearing of the application by the Plaintiffs, dated 24.6.04. If the Defendants found that the Plaintiff/Applicants were not desirous of prosecuting their application, the procedures and the law are well known to all – apply for dismissal for want of prosecution of the application or seek vacation of the said interim orders.

The defendants have done neither.

All in all therefore, this court rules and orders as follows:-

1. Rules that the interim orders granted by this court on 24.6.04 and extended on 5.10.04 are still in force, and remain in force as per the orders of the 5.10.04.

Further, the orders herein referred to will attract severe penal sanctions if disobeyed or flouted by any or all the Defendants, severally and/or jointly.

2. The status quo as on the 5.10.04 to be maintained until the interpartes hearing of the application date 24.6.2004, or further orders of this court.

3. Parties to move with speed to pick a mutually agreed upon date for the interpartes hearing of the application herein, such hearing date to be before the end of November, 2004.

It is so ruled and ordered.

DATED and delivered in Nairobi, this 5th day of November, 2004.

O.K. MUTUNGI

JUDGE