



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1627 OF 2016

RUTH WAMBUI NJENGA.....PLAINTIFF/RESPONDENT

=VERSUS=

JOHN KAMAU NDUGIRE.....1ST DEFENDANT/APPLICANT

JOSEPH NDIRITU T/A

JOGAN DRIES AUCTIONEERS.....2ND DEFENANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 14th June 2019 brought under section 1A, 1B, 3A and 80 of the Civil Procedure Act, Cap 21 and Order 45 rule 1 of the Civil Procedure Rules 2010, Article 159 (2) of the Constitution and all other enabling provisions of the law.
2. It seeks orders:-
 1. *That this Honourable court be pleased to set aside the order of the Honourable Lady Justice L. Komingoi and dated 26th March 2019 restraining the 1st defendant from interfering with the plaintiff/respondent's occupation of the premises and hotel business pending the hearing and determination of this suit.*
 2. *That this Honourable court be pleased to set aside the order of the Honourable Lady Justice L. Komingoi and dated 26th March 2019 compelling the return of the plaintiff/applicant's attached goods at the cost of the 1st and 2nd defendants.*
 3. *That this honourable court do review its ruling as delivered by the Honourable Lady Justice L. Komingoi as delivered and dated 26th March 2019.*
 4. *That the costs of this application be provided for.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (e).
4. The application is supported by the affidavit of John Kamau Ndugire, the 1st defendant/applicant sworn on the 14th June 2019.
5. The application is opposed. There is a replying affidavit sworn by Ruth Wambui Njenga, the plaintiff/respondent herein on the 7th August 2019.
6. On the 30th January 2020, the court with the consent of the parties the court directed that the Notice of Motion be canvassed by way of written submissions. Parties were given fourteen (14) days to file their written submissions. By the time of writing this ruling, none of the parties had filed written submissions.
7. It is the 1st defendant's/applicant's case that the ruling delivered by this court on 26th March 2019 was oppressive and that there are material errors on the face of the court record which form sufficient grounds to review its ruling dated 26th March 2019.
8. The plaintiff/respondent on the other hand contends that the applicant has not satisfied the conditions for review under Section 80 of the Civil Procedure Act and order 45 of the Civil Procedure Rules.

9. I have considered the Notice of Motion and the affidavit in support. I have also considered the replying affidavit. The issue for determination is whether this application is merited.

10. This court in its ruling dated 26th March 2019 granted the following orders:-

“(a) That an order is hereby issued restraining the defendants/respondents from interfering with the plaintiff’s/applicant’s occupation of the premises and hotel business pending the hearing and determination of this suit.

(b) That the attached goods be returned to the plaintiff/applicant in good working order and the defendants/respondents do incur the expenses of returning them.

(c) That the costs of this application be in the cause.”

11. Looking at the above orders, I am unable to see any error apparent on the face of the record. The orders were granted after the court considered the Notice of Motion dated 22nd December 2016. This application was filed three (3) months after the said ruling was delivered. It was brought after a long delay.

12. I find that the application does not meet the conditions set out under order 45 of the Civil Procedure Rules. The same is not merited and the same is dismissed with costs to the plaintiff/respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 29TH DAY OF JULY 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

Mr. Owino for the 1st Defendant

No appearance for the 2nd Defendant

Phyllis - Court Assistant