



REPUBLIC OF KENYA



**Nyagah v Maalim & 2 others (Civil Case 96 of 2016)  
[2024] KEHC 8812 (KLR) (Civ) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8812 (KLR)

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

**CIVIL**

**CIVIL CASE 96 OF 2016**

**JN MULWA, J**

**JULY 15, 2024**

**BETWEEN**

**NAHASHON NGIGE NYAGAH ..... PLAINTIFF**

**AND**

**ABDULLAHI AHMEDNASIR MAALIM ..... 1<sup>ST</sup> DEFENDANT**

**CYPRIAN ADAMA NYAKUNDI ..... 2<sup>ND</sup> DEFENDANT**

**AL-NUR MEDIA AFRICA LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before the court for determination is an Application dated 17/3/2023 brought by the plaintiff under various legal provisions, notably Order II Rule 3 (1) (h) (i) of *Civil Procedure Rules* 2010 and Sections 1, 1A, 1B, 3 and 3A of the *Civil Procedure Act*
2. The applicant seeks Orders that proceedings in this case be stayed to await hearing and determination of HCCC No. 46/15, *Tatu City Ltd & others v Stephen Armstrong Jennings & Other* and HCCC. No 230 of 2015 – *Kofinaf Company Limited & Others v Nabashon Ngige Nyaga & Others*.
3. It is premised on a ruling dated 27/04/2017 in this suit, and affirmed by the Court of Appeal in its ruling dated 23/02/2023, whereof the Court noted that this matter of defamation may not be effectively adjudicated upon before the determination of the claims affecting the same parties, pending at the Commercial Division of the High Court and HCCC. No. 46 of 2015 *Tatu City Limited & Others v Stephen Armstrong Jennings & Others* and Hcc. No. 230 of 2015 – *Kofinaf Company Limited & Others v Nabashone Ngige Nyagah & Others*;

and further supported by an Affidavit sworn on 17/03/2023 by Nahashon Ngige Nyagah the Plaintiff.

I have perused the two court rulings.



4. In the Order of the High court (Jaden Thurania J), the Plaintiff/applicant's application for injunction restraining the defendants from further publishing or causing to be published any news, items, statements, articles, words, images, pictures on internet, Newspapers, Social Media or any medium linking the Plaintiff or imputing impropriety corruption, bribery or gross misconduct was dismissed.

The Court of Appeal on the same matter (being an Appeal from the ruling of Jaden Thurania, J. dated 27/04/2017 upheld the High Court's decision.

5. In Opposing the Application Ahmednassir Abdullahi Maalim SC, a director of the 3<sup>rd</sup> Defendant as well as the 1<sup>st</sup> Defendant swore a replying affidavit on 23/06/2023 urging the court to find no merit in the motion dated 17/03/2023 and dismiss it with costs.

It is the Respondent's case that the instant case is different from the two suits cited by the applicant stating that:-

1. HCC NO. 46 of 2015 relates to alleged breach of fiduciary duty, fraud and Kofinaf Limited, and
2. HCCC. No. 230 of 2015 relate to alleged fraud in the shareholding and directorship structure of Principle Saturn Properties Limited, and that the issues in HCCC. No. 46/2015 and HCCC. No. 230/2015 as they relate to corruption and bribery involving the judge, had been heard and determined by the court in a ruling dated 15/10/2015 by Hon. E. Ogola.

I have also perused the application subject of the ruling.

6. The three suits in my view are interconnected and closely similar in several aspects as found by the Court of Appeal in Civil Appeal No. 192 of 2017 at paragraph 3 of its ruling when it noted that the dispute revolved around two companies; Tatu City Limited and Kofinaf Company, and their two sets of directors are led by the Plaintiff/Appellant and the other by one Stephen Armstrong Jennings fighting over the shareholding and directorships of the said companies and as a result, High Court Civil case No. 46 of 2015 was filed in which both companies are fighting over the control of the two companies.
7. Two suits – HCC No. 96 of 2016 and HCC No. 46 of 2015 are pending hearing and determination. By the court of Appeal interrogation and ruling of the three suits, it is clear that the said suits are interrelated and determination of HCCC No. 46 of 2015 may not determine the others, but its outcome in my view will have a bearing on the defamation case whose causes of action in the larger part arose from issues or cause of action in the other cases.
8. The claims in the other cases referred to herein may affect the parties in the instant suit.  
HCCC. No. 230 of 2015 is part heard before the Commercial Division of the High Court. The other two are yet to be set down for hearing.
9. Upon consideration, I am persuaded that staying proceedings in HCCC. No. 96 of 2021 and HCCC. NO. 46 of 2015 will not prejudice any of the parties contrary to what the Respondents have deposed. In my view, there is likelihood that the part heard case HCCC. No. 230 of 2015 may be concluded sooner than later and most likely before this suit wherein directions are yet to be taken.

For the foregoing the application dated 17/03/2023 is allowed interms of prayer no. 2

Each party shall bear own costs of the application.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 15TH JULY, 2024.**



**JANET MULWA**  
**JUDGE**

