



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

MISCELLANEOUS APPLICATION NO. 012 OF 2020

CHARLES NDWIGA NTHIMBA.....APPLICANT

VERSUS

HAMPTON IRERI NJERU.....RESPONDENT

RULING

1. Through the application dated 27th January 2021 the Respondent/Applicant, Hampton Ireri, seeks the following orders;

1. Spent.

2. THAT pending the hearing and determination of this application this honourable court be pleased to stay the warrants of arrest directive issued on 14/12/2020.

3. THAT this Honourable Court be pleased to lift the warrants of Arrest directive dated 14/12/2020.

4. THAT appropriate orders be made.

2. The application is brought under section 1A, 1B and 3A of the Civil Procedure Act chapter 21 Laws of Kenya and all other enabling provisions of the law.

3. The application is supported by the Respondents affidavit and based on the following grounds;

1. THAT this honourable court gave its ruling on 19/11/2020 requiring the applicant herein purge the contempt within 14 days from the date of the ruling. The honourable Court set a date for mention to confirm the status on 10/12/2020.

2. THAT the applicant dutifully complied with the directions and restored Msasa Junior Academy with full participation of the Respondent herein and within the 14 days given by the court.

3. THAT the Appellant prepared an Affidavit for filing in court before the mention date of 10/12/2020 but there was a problem with the E- filing system and the Affidavit could not be filed in time

4. THAT this matter was not mentioned on 10/12/2020 because the Honourable Court was not sitting

5. THAT the Applicant was surprised when court bailiffs called him and told him that Warrants of Arrest had been issued against him and therefore he should avail himself at Milimani Commercial courts

6. THAT unless the said warrants are lifted the applicant stand to suffer wrongful arrest and detention for matters he has already complied with.

4. The Applicant opposed the application through his replying affidavit dated 25th February 2021. He states that by a ruling dated 19th November 2020, the respondent was found to be in contempt of court orders made on 19th February 2020 and was ordered to reinstate the management and operations of the school known as Msasa Junior Academy to its former status. He avers that the respondent has failed/refused to purge the contempt and has not restored the school's management and operations to its former state. He faults the respondent for continuing to use the motor vehicles and staff members of Msasa Junior Academy to operate and run the affairs of Whites Premier schools.

5. **Mr. Ndwiga** states that the respondent wrote to the parents and guardians of Msasa Junior School informing them that the said school had rebranded and was operating as Whites Premier School while he continued to receive school fees from parents of Msasa Junior School. He contends that he has no control or access to bank accounts opened and maintained by the respondent thereby halting the repayment of the huge loans that had been advanced to Msasa Junior school. He further states that two motor vehicles under registration numbers KCF 204D and KAN 128L are under facilities and risk being repossessed due to default of payment. He adds that the respondent has locked him out of the management and operations of Msasa Junior School and has taken over everything that belongs to the school which he has transferred to Whites Premier School.

6. The application was canvassed by written submissions which I have considered. The main issue for determination is whether the applicant has made out a case to warrant lifting of the Warrant of arrest.

7. The Applicant seeks the lifting of the warrants of arrest issued by this court on 14th December 2020 while stating that he has dutifully complied with the directions of the court and restored Msasa Junior Academy with the respondent's full participation. He further states that the warrants of arrest were issued irregularly because he had complied with the ruling but was not given a chance to demonstrate the same since his affidavit was not uploaded at the e-filing system in time.

8. The respondent on the other hand states that the applicant has not complied with the court orders with respect to the control of the bank accounts, branding on motor vehicles and circulars sent to the parents and guardians of the pupils.

9. It is not in dispute that this court on 19th November 2020 found the applicant to have disobeyed the court orders and directed the applicant to reinstate the management and operations of the school known as Msasa Junior Academy to his former status as at 1st December 2019. The court further directed the applicant to avail the school's financial records to the court.

10. With regard to compliance with the orders of 19th February 2020, the applicant was restrained from changing the school name or the bank accounts held in KCB THIKA BRANCH 069000014895 AND FAMILY BANK ACCOUNT 069000014895. The respondent observed that the applicant receives school fees from parents using a different account and has opened a separate bank account for the same use. I have perused exhibit CNN exhibited by the respondent. The family bank account statement relates to period beginning 12/19/2019 and ending 30/09/19 which period was before the court rendered its impugned decision. Similarly, the KCB BANK account statement, relates to a period before court orders were issued.

11. The respondent further contended that the applicant wrote to the parents and guardians of Msasa Junior School informing them that the said school had rebranded and operating as Whites Premier School where he continued to receive school fees from parents of Msasa Junior School. I have perused the letter written to the parents and I note that it is dated 7th February 2020 which was before the court pronounced itself on 19th February 2020. I note that the applicant has also changed the branding of the vehicles to read Msasa Junior Academy. The manner in which the applicant rebranded the vehicles is immaterial to this court did not specifically give directions on the same.

12. In sum, I am not persuaded that the respondent has demonstrated why the warrants of arrest should continue to be in force. Moreover, this court had at the initial stages of this dispute indicated that the matter should be referred to arbitration in line with the terms of the parties' partnership agreement. Consequently, I find that the application dated 27th January 2021 merited and I therefore allow it with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF JULY 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.

W. A. OKWANY

JUDGE

In the presence of:

Ms Mutinda for Ayieko for Respondent.

Mr. Mutemi for the Applicant.

Court Assistant: Sylvia.