



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO.E133 OF 2019

DR NISHA SAPRA T/A ALL

SMILES DENTAL PRACTICE.....PLAINTIFF/APPLICANT

- VERSUS -

AFRICARE LIMITED..... DEFENDANT/RESPONDENT

RULING

1. There are two applications under consideration both filed by **Dr. Nisha Sapra t/a All Smiles Dental Practice** (hereafter Dr. Nisha). The respondent in both those applications is **Africare Limited** (hereafter Africare).
2. Africare has its main offices at Golden Plaza, Waiyaki Way. It is at that office it allowed Dr Nisha to run and manage a dental clinic. In that respect both parties entered into a revenue sharing agreement. One of the conditions under that agreement was that Dr. Nisha would 'not collect directly any money in any form from the patient' she attended to. The agreement also had an arbitration clause. By letter dated 9th May 2019 Dr. Nisha "Invoked" the arbitration clause and declared a dispute. In declaring that dispute Dr Nisha did not propose a name of an arbitrator for consideration by Africare, as envisaged under clause 8, the arbitration clause.
3. Dr. Nisha filed this action seeking interim measure of protection as provided under Section 7 of the Arbitration Act. By her plaint Dr. Nisha alleged that her claim, from Africare, for her share of revenue had not been honoured. She further stated that Africare intended to evict her from their premises.
4. Dr Nisha filed a Chamber Summons dated 17th May 2019. When the application came before court, ex parte, the court granted Dr. Nisha interim orders restraining Africare from evicting her.
5. It soon became clear that there was no threat to evict Dr. Nisha but rather that the disagreement related to revenue sharing. Each party has accused each other of wrong doing.
6. The second application a chamber summons dated 29th August 2019 is for injunction to restrain Africare from installing, in the premises, another dental clinic and an order holding Africare in contempt of court.
7. Parties have submitted on the two applications as though the court is the forum they chose to determine their grievances. I need to remind the parties that the choice of their dispute resolution is arbitration, this court cannot therefore engage and determine which party has or has not honoured the revenue sharing agreement.
8. The plaintiff first came to this court in May 2019 and it is not clear why up to now the process of appointing an arbitrator, provided under clause 8 of the parties agreement, has not been followed. That failure to follow the process of appointment or arbitrator not having been followed, and the parties having pitched their tents in this court may be reason enough to deny Dr Nisha the prayers sought in her application. By now Dr Nisha should, with speed, have taken the dispute to where it belongs, before an arbitrator.
9. The chamber summons dated 17th May 2019 is in my view not merited. Africare has stated clearly, through its affidavits it has no intention to evict Dr Nisha. Why then would this court issue orders of injunction when there is no threat of eviction. Such an order would be in vain.
10. The second application of Dr Nisha, dated 29th August 2019 is misconceived. Dr Nisha premised that application on the basis that the ex parte interim injunction restrained Africare from installing another dentist on its premises. That belief of Dr Nisha is not supported by the interim injunction of the court. The interim injunction was directed at restraining Africare from evicting Dr Nisha and that is all.

11. In view of the above discussion there is no basis of granting the prayers sought and the chamber summons applications dated 17th May and 29th August 2019 are hereby dismissed with costs.

12. This case will be mentioned on 29th July, 2020 for further orders.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 14th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19 pandemic** and in light of the directions issued by **his Lordship, the Chief Justice on 15th March, 2020**, this decision has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

MARY KASANGO

JUDGE