

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL CASE NO. 107 OF 2013

HIGH FLYER SERVICES AND PUBLISHERS LIMITED.....PLAINTIFF

- VERSUS -

PETER GICHUKI MWANGI T/A

HIGH FLYER PUBLISHERS.....DEFENDANT

RULING

1. By the chamber summons dated **23rd January 2020** is filed by the defendant. The defendant has prayed for an order of the dismissal of this suit with costs and in alternative that this suit be marked as compromised in view of the judgment issued in the case number HCC NO 45 OF 2011. The application was not opposed by the plaintiff and although served with a hearing notice the plaintiff did not attend court, on 12th March 2020, when the application was heard.

2. The background of this matter is that, after filing this suit, the plaintiff filed an application on 19th March 2013. By that application the plaintiff sought various injunctive orders, amongst which he sought, to restrain the defendant from publishing, promoting, selling, or supplying books as High Flyer Series. That application was heard by Justice Farah S. Amin. The Learned judge delivered a Ruling to that application on 5th October 2016. By that Ruling the learned judge upheld the preliminary objection raised by the defendant. The pertinent part of the judge's Ruling is as follows:

“The plaintiff has failed to establish its case on a prima facie basis. This suit cannot proceed until the earlier suit with the same parties and the same subject matter has been heard and determined or alternatively is consolidated with this suit. No such application has been made.”

3. The other suit the learned judge referred to, in that Ruling, is HCC NO 45 OF 2011. Earlier in the judge's Ruling the judge did note that this suit was filed when the plaintiff failed to obtain interlocutory injunction in HCC 45 OF 2011. The learned judge, by her Ruling, stayed this suit pending the determination of HCC NO 45 OF 2011. That case, HCC NO 45 OF 2011, was concluded when the court delivered its judgment on 20th December 2019. It follows that since the issues in this suit were determined when that judgment was delivered that there no basis of continuing to have this suit on record. The application has merit and will be granted with costs.

4. The orders of the court are that:

a) This suit is hereby marked as compromised.

b) The defendant is granted costs of this suit and costs of the chamber summons dated 23rd January 2020

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MAY, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **5th** day of **May, 2020**.

MARY KASANGO

JUDGE