

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 165 OF 2019

GEORGE KAMAU NDIRANGU t/a JEAN VENTURES...APPLICANT

VERSUS

KENYA COAST NATIONAL POLYTECHNIC.....RESPONDENT

R U L I N G

1. The two counsel here agreed on how to proceed with the defendants application dated 30/4/2019, on the face of the orders of the court of 18/4/2019. The only point of contention is whether or not to extend the interim orders issued on the 12/4/2019.
2. The plaintiff seeks that the orders need to be extended because while they were in existence the Defendant violated the same by ejecting the plaintiff and workmen from the site and installed another contractor. Counsel then said that the extension would facilitate the need to protect the integrity of the court process so that the defendant is not left to enjoy the benefit it has derived by non-compliance with court orders and that it intends to lodge an application for contempt against the defendant.
3. That request by the plaintiff was vehemently opposed by the defendants counsel on the basis that there is a third party to which the contract has been awarded and who is not yet a party to these proceedings and that extension of the orders are likely to invite anarchy in an institution of learning.
4. It was equally added that the contract duration and financial with is known in monetary terms and that any damage that any result in thus quantifiable and assessable in monetary terms and this damages would be an adequate remedy.
5. I have looked at the record and the orders of 18/4/2019 in particular. On that day the court extended the orders of 12/4/2019 for a period of 28 days. Those days are yet to lapse and will lapse on 16/5/2019. They are still in force. I do not think that just today those orders deserve being extended. More importantly however is the fact that there is an admitted fact that the plaintiff was ejected way back on the 17/4/2019 according to the Replying Affidavit of GEORGE KAMAU NDIRANGU at paragraph 7.
6. That act is what would form the basis of the intended application for contempt which this court should not pre-empt.
7. In my view it would be pre-emptive of the intended application at this time to make any comment on the actions of the defendants. I however have to balance the interest of both parties before me to ensure no prejudice visits one side unduly. That I consider can be best served by ordering that pending further orders of the court and proceedings on arbitration and as future circumstances would dictate the status quo now prevailing shall be maintained.
8. Once the plaintiff files the intended application, let the same be fixed for hearing together with that by the defendant dated 30/4/2019 on a date taken at the Registry on priority bases.

Dated and delivered at Mombasa this 15th day of May 2019.

P.J.O. OTIENO

JUDGE