



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 126 OF 2009

MICHAEL KUNGU KIGIA.....APPELLANT

Versus

KENYA NATIONAL UNION OF TEACHERS.....RESPONDENT

RULING

**The acrimony**

1. This appeal has a long not so rosy history. The dispute herein arose out of an alleged breach of a tenancy Agreement by the Appellant which led the Respondent to close the rented premises of the Appellant. The Appellant then filed suit seeking inter alia an order for the re-opening of the rented premises.

2. The appellant filed multiple cases and applications on same cause of action. He also lodged numerous complaints against advocates herein over these cases. The acrimony between the appellant and the advocates was visible in the air and emotions would reign high before the court with the appellant accusing counsels of misconduct and counsels accusing the appellant of ill will and malice. Multiplicity of cases and complaints herein became headlong until at some point the court listed all these cases together in a bid to bring them to finality. As part of amicable settlement, parties recorded consent to the effect that the appellant shall not file any other cases or lodge complaints against counsels herein on the basis of the cause of action to which this appeal as well as the other cases relate. Ultimately, parties agreed to sign consent settling all the cases. Kariuki advocate was to prepare the consent for signing by the parties. Towards this end the following is relevant.

**Settlement**

3. On 25<sup>th</sup> May 2017 parties addressed the Court that they are amenable to settle these cases once and for all. That they shall file suitable consents on each file involving the appellant herein within 21 days and serve him with the draft thereof for consideration. In **Miscellaneous Application No. 20 Of 2016 Michael Kungu Kigia Vrs. Desedario Nyamu Nyaga** the parties filed consent to withdraw all the allegations of professional misconduct, corruption and any other allegation in relation to the Respondent therein. The Matter in Misc. application No. 20 of 2016 was marked as withdrawn.

4. **Miscellaneous Application No. 13 Of 2011 Michael Kungu Kigia Vrs Meru Teachers Ltd** was also withdrawn on 11<sup>th</sup> October 2017 with no order as to costs.

5. **High Court Civil Appeal No. 4 of 2016 Michael Kungu Kigia Vrs Meru Teachers House Ltd** was similarly withdrawn with no order as to costs on 27<sup>th</sup> July 2017.

6. **Misc Application No. 94 of 2011 Michael Kungu Kigia Vrs Meru Teachers Ltd** was withdrawn with no order as to costs on 27<sup>th</sup> July 2017.

7. The common objective and intention of the parties was that the consent entered on 25<sup>th</sup> May 2017 will be replicated in all the files that are related and concern the parties herein. But, a snag emerged on costs on outstanding cases.

8. I call it a snag because no sooner had the foregoing consents were recorded that the appellant embarked on an ominous mission to file suits and complaints on the cause of action herein which was contrary to the consent filed in court. Nyamu Nyaga advocate became furious with this breach and insisted that he will demand for costs in the remaining suits since the appellant has not shown any good faith in his subsequent actions. The court was called upon to resolve the issue of costs.

9. On 20<sup>th</sup> April 2019 I directed the parties to file submissions on whether or not the appellant should pay costs of this Appeal.

### **Submissions**

10. The Appellant filed submissions on 28<sup>th</sup> February 2019 he urged this court to withdraw all the remaining cases i.e. Case No. 25 of 2009, No. 24 of 2017, No. 126 of 2009, No.25 of 2017 and No. 44 of 2017 with no order as to costs. He filed further submissions dated 15<sup>th</sup> May 2018 claiming that the firm of Nyamu & Co. advocates have been un-procedurally on record.

11. The 2<sup>nd</sup> Respondent filed its submissions on 29<sup>th</sup> April 2019. They contend that they were brought to this Appeal through the appellant's application for review dated 26<sup>th</sup> July 2013. That the said application was thereafter dismissed in their favour with costs. They subsequently filed their bill of costs which was taxed at Kshs 51,185/= they therefore submit that they are entitled to these costs.

### **ANALYSIS AND DETERMINATION**

12. The firm of Nyamu Nyaga & Co. advocates came on record on behalf of Meru Teachers House Ltd on 3<sup>rd</sup> October 2012 to defend it against the Appellants application dated 26<sup>th</sup> July 2012. The application sought this Honourable Court to review the Ruling issued on 13<sup>th</sup> July 2012 in CMCC No. 153 of 1997 as Meru Teachers House Ltd was not party to the suit and the firm of Nyamu & Co. Advocates is improperly before court. It also sought the revocation of the warrants issued by the lower court as were erroneously issued.

13. Lessit J. who heard the application made a determination on 1<sup>st</sup> August 2013 whereby she held that the application for review can only be brought where no appeal has been preferred. The court took the view that the applicant filed the application contrary to Order 45 rendering the application incompetent. She therefore dismissed the application with costs to the Respondents.

### **Representation by Nyamu Nyaga Advocate**

14. From the foregoing and the record, the firm of Nyamu Nyaga & Co. advocates were properly on record in this matter and in the matter before the trial Court. I also note that the Ruling of Lady Lessit J has not been appealed against or reviewed by court. There is absolutely no procedural or substantive impediment in the representation by the firm of Nyamu Nyaga & Co. Advocates of the 2<sup>nd</sup> Respondent herein.

15. It bears repeating the reply by Desderio Nyamu Nyaga and dated 22<sup>nd</sup> March 2018 that the appellant dragged M/S Meru Teachers House Ltd into these proceedings when he filed the application dated 26<sup>th</sup> July 2012. The application was heard and subsequently dismissed with costs in favour of M/s Meru Teachers Ltd. The costs were eventually taxed in favour of Meru Teachers House Ltd at Kshs. 19,625/=.

16. I have taken into consideration the time taken in these proceedings and the fact that litigation must come to an end. This appeal has been in court for the last ten years and it has been saddled upon by numerous unnecessary applications. It is time closure is brought of these proceedings and I will give appropriate orders thereto. But, one thing should be made clear; that the interest and representation of the 2<sup>nd</sup> Respondent in this appeal was limited to the application dated 26<sup>th</sup> July 2012. Costs of the said application were awarded and are already taxed and therefore payable. Such is accrued right which could only have been buried by the parties if they had signed a consent. But, as things are now, I will not pretend to or take away such accrued right in costs. I have also stated that the decision by Lesiit J has not been reversed on appeal or review. Accordingly, this appeal is marked as withdrawn without further costs except costs of the application dated 26<sup>th</sup> July 2012 awarded to and taxed in favour of the 2<sup>nd</sup> respondent are payable.

17. As parties intimated to the court that all suits and proceedings based on this cause of action be withdrawn, I direct, subject to this ruling that Case No. 25 of 2009, No. 24 of 2017, No.25 of 2017 and No. 44 of 2017 in so far as they are based on the cause of action herein are withdrawn with no order as to costs. This ruling shall be placed in all files affected by it for appropriate action.

18. I hope this ruling will bury beneath it all matters relating to or arising out of the cause of action herein.

**Dated, signed, and delivered in open court this 15<sup>th</sup> July, 2019**

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**F. GIKONYO**

**JUDGE**

**IN PRESENCE OF**

Appellant –present

Nyamu Nyagah for 2<sup>nd</sup> respondent – Kirimi holding brief

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**F. GIKONYO**

**JUDGE**