



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 282 OF 2018

NJUGUNA WAWERU.....PLAINTIFF

VERSUS

GEORGE GICHEHA KIMEMIA.....DEFENDANT

RULING

1. **Njuguna Waweru** and **George Gicheha Kimemia**, Plaintiff and defendant respectfully, were in a partnership called Capricorn Motor and Risk Assessors. I will not go into details of how that partnership was formed or what happened after its formation. This is because each of those parties narrate their own facts which contradict each other.

2. On **31st July 2018** I directed the parties to attempt settlement through mediation. Parties reported back to court on **2nd October 2018** and informed the court that they were unsuccessful in settling the matter through mediation.

3. Parties have brought before me counter applications seeking to injunct each other from operating the partnership bank account amongst other prayers. The plaintiff on that score has an advantage because he obtained ex parte interim orders stopping the defendant from operating that account. That ex parte order was issued on **19th July 2018** and it does look like the defendant has since that date not been able to access the said partnership account. The defendant alleges that the plaintiff has accessed that account and now operates it as a personal account.

4. In my view in the interest of justice and with a view of promoting the overriding objective of the Civil Procedure Act I make a finding that this is a case that should be heard (full hearing) as a matter of urgency. There is urgent need for the parties to know their respective rights under the partnership.

5. In view of the above, I will not substantially Rule on the applications dated **18th July 2018** and dated **20th December 2018**. I will however give an order freezing the partnership bank account to ensure none of the parties is having an advantage over the other one.

6. I will also, at the reading of this Ruling order that there be no further interlocutory applications filed by any party without the leave of the court. This is to ensure parties concentrate their energies an preparing for the full hearing of this case. There is need, in this troubled partnership, for closure which can only be achieved by fully hearing this case.

CONCLUSION

7. The following are the orders that commend themselves to me. I order as follows:

*a. The applications dated **18th July 2018** and **20th December 2018** are hereby stayed until further orders of this court. In that regard all parties are barred from filing any further interlocutory applications, in this matter, without the leave of the court.*

*b. On the courts own motion the interim order granted herein on **19th July 2018** is hereby vacated.*

c. An order is hereby issued freezing the Bank account No. 031000005947 in the name of Capricorn Motor and Risk Assessors at Family Bank, until further orders of the court. None of the account holders are permitted to operate that account until further orders of this court.

d. At the reading of this Ruling directions will be given on the full hearing of this suit.

e. Liberty to apply is hereby granted.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of October, 2019.

M. KASANGO

JUDGE

Ruling read in open court in the presence of

SophieCourt clerk.

.....FOR THE PLAINTIFF

.....FOR THE DEFENDANT