



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL & ADMIRALTY DIVISION**

**HCCC NO. 450 OF 1999**

**MOHAMED ELTAFF.....1<sup>ST</sup> PLAINTIFF**

**SAGA SAFARI LIMITED.....2<sup>ND</sup> PLAINTIFF**

**SAGA TRAVEL AND SAFARIS A.B.....3<sup>RD</sup> PLAINTIFF**

**TUOR AFRICA SAFARIS LIMITED.....4<sup>TH</sup> PLAINTIFF**

**-VERSUS-**

**DREAMCAMP KENYA LIMITED.....DEFENDANT**

**RULING**

1. The Court delivered a ruling cum directions in this matter on 30<sup>th</sup> July 2018. The same is evident from the copy on record. The final orders given therein were inter-alia that, the parties were to comply with the orders given on 12<sup>th</sup> June 2009, forthwith and within the timelines set in the order given herein on 11<sup>th</sup> November 2011. Thus the parties had 44 days within which to comply with the said orders.

2. The Defendant subsequently informed the Court on 18<sup>th</sup> September 2018 that, they had obeyed the Court orders and/or directive. The Plaintiff had not. The Defendant had filed a valuation report. It was indicated that, the Plaintiff had not filed any valuation report. Mr. Opere appearing for the Plaintiff informed the Court that, they required time to comply accordingly. Though the Defendant vehemently opposed the same, I gave the Plaintiff time and directed that, they file and serve their valuation report by midday on 21<sup>st</sup> September 2018.

3. However, on 27<sup>th</sup> September 2018 when the matter came back to Court, the Court was informed that, the Plaintiff had instead filed an application seeking for orders inter alia that; the orders of 2<sup>nd</sup> August 2018, be stayed pending the hearing of the application and the Court reviews the said orders of 2<sup>nd</sup> August 2018 to enlarge time for compliances thereof by a further sixty (60) days or such period as the Court shall deem fit in the circumstances, and further the Defendant be directed to provide the 1<sup>st</sup> Plaintiff with all documents its Arbitrator shall require to conduct the valuation of the Defendant, grant the necessary access to the premises for the Arbitrator to gather information and data necessary for the valuation, and the costs of the application be in the cause.

4. It suffices to note that, the Plaintiff had forty four (44) days within which to comply with the subject Court order. Those days lapsed on 14<sup>th</sup> September 2018. The reasons advanced are for non-compliance that the Plaintiff could not comply as it has come to his attention that, the Defendant had diluted its share to 1/600 contrary to the Judgment of 28<sup>th</sup> July 2000. It is also averred that, the 48 hours given for the compliance thereafter was insufficient and not practically possible for the 1<sup>st</sup> Plaintiff to appoint an Arbitrator to undertake and complete the valuation exercise.

5. Further that, it is pre-mature for the Defendant to file its report without the Plaintiff being given an opportunity to attempt to arrive at a joint determination on the valuation of the Defendant's Company as envisaged in the Court's order of 11<sup>th</sup> November 2011. That the Plaintiff will suffer prejudice, and irreparable loss if the orders sought are not granted.

6. In addition, the 1<sup>st</sup> Plaintiff filed a Preliminary objection to state that, the Judgment entered herein on 28<sup>th</sup> July 2000 is incapable of enforcement "by dint of Section 4(4) of Cap 22 Laws of Kenya."

7. The application was opposed vide the grounds of opposition filed by the Defendant on 2<sup>nd</sup> October 2018 terming it frivolous, vexatious and an abuse of the Court process and coming at the last minute. It was argued that, the date for the share valuation was conclusively settled by the Court of Appeal on 27<sup>th</sup> July 2000, and there is no dispute as to the Plaintiff's shareholding as at that date. That, the delay in this matter is prejudicing the Defendant.

8. The Defendant also filed a Replying affidavit dated 2<sup>nd</sup> October 2018, sworn by Jeremiah Mutisya giving the historical background of this matter and rebutting the averments in the affidavit in support of the application. It is deposed that, the Plaintiff deliberately, knowingly, contemptuously and blatantly disobeyed the Court order which contained a Penal notice. That upon receipt of the order and notice, the Plaintiff's Advocates wrote to the Defendant's Advocate terming the orders as "illegal" as per the letter marked "JM-1.

9. Finally, it is argued that, the 1<sup>st</sup> Plaintiff has not sought or attempted to explain the reasons to its indolent and defiant of the Court's order and why the Court should exercise its discretion to extent the relevant period by a further sixty (60) days.

10. Subsequently in the respective arguments and/or submissions filed by the Defendant and/or made orally, the parties reiterated the averments stated above. I have considered the same and I wish to state right from the outset that, this is a very old matter evidenced from the year of filing in Court. It is about nineteen (19) years old. The Judgment herein was delivered on 28<sup>th</sup> July 2000. Thus, eighteen (18) years ago. All above parties have been in disagreement on how to comply with the said Judgment. This Court had an opportunity to read through the entire Court record and simply directed the parties to comply with the orders given on 12<sup>th</sup> June 2009. The Defendants have complied accordingly but the Plaintiffs have not. The only reason advanced as aforesaid is that, the "Defendant has diluted the share to 1/600." The question that arises is this; why didn't the 1<sup>st</sup> Plaintiff move the Court within the forty four (44) days given to state what they are alleging now? I note that indeed on 15<sup>th</sup> August 2018, they wrote to the Defendants' Counsel and stated as follows:-

*"in view of the above, our client is not ready to and willing to engage in an illegal exercise and we shall notify the court in the next mention as it is clear and obvious, that these facts were not brought to the Court's attention....."*

11. However it suffices to note that, while addressing the Court on 18<sup>th</sup> September 2018, the Counsel for the 1<sup>st</sup> Plaintiff informed the Court, they were contesting the Defendants' valuation terming it "premature". The question is this: How can the valuation be premature when the Court had ordered for the same? Further, why didn't the 1<sup>st</sup> Plaintiff file its own valuation, which would indicate the alleged "illegal" activities? What then is the purpose of now seeking to extent the period for a further sixty (60) days in view of the contents of its letter of 15<sup>th</sup> August 2018. I tend to agree with the Defendants that the 1<sup>st</sup> Plaintiff is merely delaying the conclusion of this matter.

12. The Court is bound to ensure strict compliance with overriding objections under Section 1A, 1B of the Civil Procedure Act for expeditious disposal of the case. It shall not encourage the parties herein to remain in Court forever in execution and/or compliance with a Judgment delivered in the year 2000 which has not been set aside. The 1<sup>st</sup> Plaintiff should obey the Court orders, so long as they are on record and deemed valid. It should not engage in an out of Court litigation and take its time to comply with the orders and simply turn up to state "give us more time". I find no substance in their application for extension of time.

13. However, in the interest of justice, I shall grant the 1<sup>st</sup> Plaintiff fourteen (14) days from the date of this order within which to comply with the Court order given herein by the Court, failure of which, the Court shall rely on the valuation report filed by the Defendant to make the final orders. In the meantime, the Defendant should accord the 1<sup>st</sup> Plaintiff cooperation in compliance to facilitate the valuation and the report thereof.

14. Finally, due to the fact that the delay herein has been caused by the 1<sup>st</sup> Plaintiff, they shall pay the Defendants costs for the last two Court appearances.

15. It is so ordered.

**Dated, delivered and signed in an open Court this 9<sup>th</sup> day of October 2018.**

**G.L. NZIOKA**

**JUDGE**

In the presence of:

Mr. Opere for the 1<sup>st</sup> Plaintiff/Applicant

Mr. Amin for the Defendants/Respondents

Langat.....Court Assistant