



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 547 OF 2011

GODFREY KIMANI MWANGI.....APPELLANT

- V E R S U S -

KANORERO WENDANI CO. LIMITED.....1ST RESPONDENT

KIMANI KURIA.....2ND RESPONDENT

ANDREW GIKUYU.....3RD RESPONDENT

ANASTACIA WANJIRU.....4TH RESPONDENT

RULING

1) This ruling is the subject matter of two motions dated 27.7.15 and 21.9.2015.

2) In the motion dated 21.7.2015, the respondents sought for the following orders.

1. THAT there be a stay of execution of the orders of this honourable court issued on 8th May, 2015 pending the hearing and determination of this application.

2. THAT this honourable court be pleased to review and/or set aside the ruling delivered on 8th May 2015 and dated 29th May, 2015 and/or the consequential orders thereof.

3. THAT the 1st respondent be granted leave to file submissions on the notice of preliminary objection dated 16th February, 2015 and file a substantive response to the appellants notice of motion application dated 24th November 2015.

4. THAT costs of this application be provided for.

3) The motion is supported by the affidavit of Andrew Macharia Gikuyu. When served, the appellant filed a replying affidavit he swore to oppose the motion.

4) The appellant on his part, took out the motion dated 27.7.2015 in which he sought for *interalia*:

a) THAT the Kimani Kuria, Andrew Gikuyu and Anastacia Wanjiru be summoned to this honourable court to show cause why they should not be punished for disobeying the court orders dated 8th May, 2015 hereof.

b) THAT failure of Kimani Kuria, Andrew Gikuyu and Anastacia Wanjiru to attend court, warrants of arrest be issued forthwith against them hereof.

c) THAT the said kimani Kuria, Andrew Gikuyu and Ansatacia Wanjiru be and are hereby detained in prison for a term not exceeding six (6) months and or fined for disobeying the honourable court orders dated 8th May, 2015 hereof.

d) THAT costs of the application be provided for.

5) The motion is supported by the affidavit of the Appellant/ applicant. When served, the respondents filed the replying affidavit of Andrew Macharia Gikuyu to resist the motion. When the two motions came up for interpartes hearing learned counsels recorded a consent order to have them disposed of by written submissions.

6) I have considered the grounds stated on the face of each motion, and the facts depend in the affidavits filed in support and against the applications. I have further considered the rival written submissions. In the motion dated 27.7.2015, the appellant/applicant aver that the respondents blatantly disobeyed this court's order issued on 8th may 2015 in which the respondents were restrained from evicting, harassing, intimidating or interfering with the applicant's occupation of house no. C2 standing on L.R No. Nairobi/Block 36/329 VII Kenorero Wandani house, Eastleigh pending appeal. In their submissions the respondents aver that the motion lacks merit hence it should be dismissed.

7) It is stated by the appellant that on or about 14.11.2014, the applicants purported to evict one Irene Njeri Waithera, a granddaughter of a founder member and main shareholder of Kanorero Wendani Co. Ltd. It is also alleged that the respondents purported to illegally remove the appellant as a director of Kanorero Wendani Co. Ltd. It is also averred that the respondents and their agents held a meeting on 13.3.2010 contrary to the court orders issued on 19.1.2010. The appellant further averred that on 20.3.2010 he was barred from holding a meeting. The appellant also averred that the respondents have misappropriated the rent and monies in its bank accounts and have failed to give statements of bank accounts in respect of the sums of money they withdrew from the bank accounts belonging to the company and the rent collected in respect of the suit premises known as L.R no. Nairobi/Block 36/329/VII Kanorero Wendanti House, Eastleigh Section 7. The respondents aver that the appellants have filed the motion dated 27.7.2015 to forestall the respondent's motion dated 21.7.2015 which seeks for review.

8) Having considered the divergent arguments over the motion dated 27.7.2015, I have come to the conclusion that there is no evidence that the respondents had intention to disobey the court orders. A careful consideration of the averments made in the supporting affidavit will indicate that they are general averments. It is not demonstrated that the respondents disobeyed the order of injunction. The respondents are now before this court seeking to have the injunctive order set aside. In other words there is no serious demonstration on the part of the appellant to show that the respondents wilfully disobeyed the court orders.

9) I find the motion dated 27.7.2015 to be without merit. It is dismissed with costs abiding the outcome of the appeal.

10) I have already set out the sort of orders applied for in the motion dated 21.7.2015. It is the submission of the respondents that the appellant is guilty of material non-disclosure because the orders sought in the motion dated 24.11.2014 were the same orders sought in the trial court vide Milimani CMCC No. 8198 of 2009. It is also pointed out that the aforesaid case which was filed by the 1st respondent is non-existent as the suit was withdrawn by consent of the parties vide the orders issued on 9.8.2010 and that the appellant never applied for stay of execution hence no appeal can lie. In response to the respondents' motion dated 21.7.2015, the appellant simply stated that the motion lacks merit in view of the averments made in the replying affidavit of the appellant claiming that the respondents have blatantly refused to abide by the court orders. I have considered the rival arguments. There is no dispute that this court dismissed the respondents' notice or preliminary objection dated 16.2.2015 and proceeded

to allow the appellant's application dated 24.11.2015. It is said that the suit was withdrawn and there no decision capable of being challenged on appeal. This was the gist of the respondents' notice of preliminary objection. I have examined this court's ruling delivered on 8.5.2015 and I find that the issues raised in the preliminary objection filed by the respondents was substantively considered. The respondents are now saying there is no pending suit whose decision is capable of being challenged on appeal. This submission goes against the submission made earlier where the respondents claimed that the application should have been made at the trial court. It would appear the respondents are blowing hot and cold at the same time. In my humble view, I find no good grounds to enable this court to review and set aside its decision. The motion dated 21.7.2016 is found to be without merit. The same is dismissed with costs awaiting the outcome of the appeal.

11) In the end, both the motions dated 21.7.2016 and 27.7.2016 are dismissed with costs abiding the outcome of the appeal.

Dated, Signed and Delivered in open court this 2nd day of March, 2017.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent