



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION

HCCC CASE NO. 4140 OF 1990

HOUSING FINANCE COMPANY OF KENYA LTD...PLAINTIFF

VERSUS

GEORGE GIKUBU MBUTHIA.....DEFENDANT

R U L I N G

1. The **Notice of Motion** Application before the court is dated 12th August 2015 and is filed herein on 14th August 2015 by the Defendant pursuant to Order 45 Rule 2 (1) and (2) of the Civil Procedure Rules and Section 3A and 63 (c) of the Civil Procedure Act. The application seeks the following orders;

- a. That this Honourable Court do review its orders made on 31st July 2015 and further review and correct the order given on 16th May 1991.
- b. That costs of this application and all incidental costs thereto be costs in the cause.

2. The application is premised on the grounds set out therein and is supported by the affidavit of the defendant sworn on 12th August 2015.

3. The applicant's case is that there is error apparent on the face of the decree given on 16th May 1991 and issued on 23rd October 1991. The court granted the defendant in HCCC No. 4140 of 1990 final judgment and a decree on 16th May 1991 which decree was issued on 23rd October 1991. The court issued a decree not an order. The Applicant's case is that this position is admitted by the plaintiff's Legal officers namely; Jacinta Mutio Wambua – Legal officer of the plaintiff's affidavit sworn on 30th May 1991; Timothy Kimani Ndungu – Legal Counsel of the plaintiff at paragraph 6 of his affidavit sworn on 15th February 2002 and Joseph Kamau Kania – The Manager – Legal Services of the plaintiff in his affidavit sworn on 27th March 2006. The Applicant's case is that the plaintiff is guilty of non-disclosure to this fact in its illegal Chamber Summons dated 21st February 2007 and ought to have disclosed to the court that there is nothing like Civil Suit No. 162 of 2006 between the parties herein. The Applicant submitted that on 30th May 2006, the defendant was served in court at 10.10 am with Chamber Summons dated 27th March 2006 under HCCC No. 4140 but with an illegal handwritten change to Case No. 162 OF 2006. On 30th May 2006 when the matter came before Mr. Justice P. J. Ransley – the judge changed the title of proceedings in the case to read Civil Case No. 162 of 2006. The discovery of change (by hand) of the case number by the defendant from HCCC No. 4140 of 1990 to HCCC No. 162 of 2006 in Court's

Chamber Summons dated 27th March 2006 affected and delayed the case. The Applicant submitted that Civil Case No. 162 of 2006 is an illegal suit intended to delay execution of the decree awarded in favour of the defendant on 16th May 1991. The Applicant's submitted that in sum, proceedings started by Mr. Justice Ransley on 3rd April 2006 and orders given under HCCC No. 162 of 2006 in favour of the plaintiff after 16th May 1991 are null and void and of no legal effect.

4. The Plaintiff/Respondent has opposed the application through grounds of opposition filed herein on 21st October 2015.

In opposition, the Respondent, states that

1. The Application before Court is an attempt to irregularly reopen matters that have been clearly determined by the Court and is tantamount to asking this Court to sit on appeal against its own decision.
2. The Applicant has not demonstrated sufficient reason and or proper grounds for the orders sought.
3. Litigation must come to an end one way or the other and the conduct of the Application is, with utmost respect, that of a vexatious litigant hence underserving the orders sought.
4. The application is fatally defective and the same should be dismissed forthwith.

5. Parties made oral submissions before this court, which I have considered. The issues which I raise for determination are two:

- i. Whether there is an error on the ruling delivered on 31st July 2015.
- ii. Whether suit HCCC No. 4140 of 1990 is the same as HCCC No. 162 of 2006.

6. To answer the first issue, by the ruling of this court on 31st July 2015 the

applicant had asked for orders reviewing the decree of this court dated 16th May 1990 in the HCCC No. 4140 of 1990. That application for review was dismissed in the ruling of this court aforesaid on 31st July 2015.

The request now, to review that ruling is not well founded as there are no grounds given for review. In fact, the application does not even state what exactly needs to be reviewed except that this court should still review the decree of 16th May 1991 in HCCC No. 4140 of 1990. As has been correctly pointed out by the Respondent in this matter, Litigation must come to an end, and the applicant herein should stop all further litigation in this matter lest he becomes a vexation litigant. I find no merit to review the ruling of the court made on 31st July 2015.

7. The second issue I raised is whether this suit being HCCC No. 162 of 2006 is the same as HCCC No. 4140 of 1990 all with similar parties. The Applicant's position is that the file HCCC No. 4140 of 1990 is not the current file HCCC No. 162 of 2006, and asks that the record be rectified to refer to the current suit as HCCC No. 4140 of 1990 as opposed to the current number HCCC No. 162 of 2006. The applicant states that there is no suit as HCCC No. 162 of 2006 so all orders given in that suit are null and void. In my view, there is no cause for alarm. The suit started in the High court as HCCC No 4140 of 1990 – **Housing Finance Company of Kenya Limited – vs – George Gikubu Mbutia**. However, when the Commercial Division was established in 2006, the file was transferred to this Division and was given a new number being HCCC No 162 of 2006 with the same parties.

Proceedings have taken place in the new number. Sometimes proceedings cited the new number while at the same time stating “previously HCCC No. 4140 of 1990”. The applicant has himself taken up proceedings in the new number without questioning the legitimacy of the new number. I do not understand why the applicant seeks to revert to the old number. This is because any orders issued in HCCC No. 4140 of 1990 remain valid. However, for the current proceedings the applicable court file Number is HCCC No. 162 of 2006. It is difficult to understand the problem faced by the applicant and

why he desist the HCCC No. 162 of 2006. However, if it would comfort him, he should know that all proceedings and rulings and orders and decrees issued in HCCC No. 4140 of 1990 remained valid, as the file was re-numbered HCCC No. 162 of 2006.

8. For the foregoing reasons the Defendant/Applicant's application here dated 12th August 2015 is herewith dismissed with costs to the plaintiff/Respondent.

9. However, so that the Defendant/Applicant does not continue to file vexations applications against the Plaintiff/Respondent, the Defendant/Applicant shall pay the costs of this application before he files any further applications in this matter.

Orders accordingly.

READ, DELIVERED AND DATED, AT NAIROBI THIS 11TH DAY OF FEBRUARY 2016.

E. K. O. OGOLA

JUDGE

Ruling Read in open court in the presence of

M/s Kageni for the Plaintiff

M/s Gikubu (in person) for Defendant

Teresia Court Clerk