



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL SUIT NO. 452 OF 2010

ELIJAH KANAKE PAKETURE..... PLAINTIFF

V E R S U S

MARGARET WANGARI WANYOIKE 1ST DEFENDANT

GEORGE MWAI KIMONDO..... 2ND DEFENDANT

K. B. SANGHANI & SONS 3RD DEFENDANT

JOSPHAT KIMANI 4TH DEFENDANT

RULING

1. The subject matter of this ruling is the motion dated 4th February 2016 taken out by the 3rd and 4th defendants whereof they sought for the following orders interalia.
 1. ***THAT pending the hearing and determination of this application there be a stay of the Order of court made on the 3rd February 2016 and all consequential orders thereto.***
 2. ***THAT the honourable court be pleased to review, lift and or set aside the orders made on 3rd February 2016 and reinstate the application dated 19th October 2015.***
 3. ***THAT costs of this application be provided for.***
2. The aforesaid motion was served upon the firm of M/S Jacqueline Njagi & Co. Advocates as evidenced by the affidavit of service of Simon M. James sworn on 26.02.2016. When the motion came up for interpartes hearing there was no attendance on the part of the respondents and their advocate hence the applicants were allowed to prosecute the motion exparte.
3. Miss Kababa, learned advocate for the applicants informed this court that she was relying on the grounds set out on the face of the motion and the facts deponed on the supporting affidavit. I have considered the material placed before this court plus the oral submissions of the learned counsel. The history behind this motion is short and straightforward. The 3rd and 4th defendants herein took out the motion dated 19th October 2015 in which they sought for interalia, an order for stay of proceedings during the currency of the moratorium declared by the statutory manager of Concord Insurance Co. Ltd. The aforesaid motion was dismissed on 3rd February 2016 on the basis that there was no evidence that the moratorium period had been extended upon its expiry. The applicants, being aggrieved have now approached this court seeking for the dismissal order to be set aside by way of review and for the dismissed motion to be reinstated and fixed for interpartes hearing.

4. I have already stated that the aforesaid motion was served and there is no response to it hence it remains unopposed. It is the submission of the 3rd and 4th defendants that their application was dismissed on the basis that they had failed to prove and tender evidence to show that the orders issued on 6.2.2015 had been extended upon expiry. The defendant has now presented a copy of the aforesaid order.
5. The defendant have argued that they could not readily produce the same in court at the time of hearing the dismissed motion dated 19.10.2015 since the court file i.e. H.C.C.C no. 383 of 2015 could not be traced at the registry despite spirited efforts being made to search. The aforesaid assertion was not controverted. I am satisfied that the 3rd and 4th defendants have successfully convinced me that there is need to review the order dismissing the motion dated 19.10.2015 issued on 3rd February 2016. In the end the motion dated 4th February 2016 is allowed in terms of prayer 2 with costs being in the cause. Consequently the motion dated 19.10.2015 is ordered reinstated and should be fixed for interpartes hearing on priority basis.

Dated, Signed and Delivered in open court this 1st day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant