



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 1 OF 2011

STEPHEN WANYEE ROKI.....PLAINTIFF

- VERSUS -

K-REP BANK LIMITED.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

DAVID WAWERU.....3RD DEFENDANT

RULING

1. The application before me is dated 8th March 2016. It is an application brought by the 2nd Defendant, the **CITY COUNCIL OF NAIROBI**.
2. The applicant sought the review, variation or setting aside of the orders which this court made on 7th March 2016.
3. The orders in issue were in the following terms;
 - “1. ***The application dated 2nd March 2016 is fixed for hearing on 6th April 2016.***
 2. ***Until that date the status quo prevailing in the accounts cited in the application will be maintained. In other words, the Garnishee is to ensure that funds are not paid out from the said accounts, from the moment this order is served upon it.***
 3. ***However, the parties and the Garnishee shall be at liberty to apply”.***
4. When canvassing the application, Mr. Mokuu, the learned advocate for the applicant, submitted that this court lacked the jurisdiction to hear the plaintiff’s application.
5. The basis for that contention was that the Nairobi County Government was a creature of the Constitution. The applicant added that it enjoys the same immunity as the Central Government, pursuant to Section 21 (4) of the Government Proceedings Act.
6. It is the applicant’s submission that the processes of execution set out in the Civil Procedure Act were not applicable to it.

7. The only form of execution which could apply to the applicant are said to be either Mandamus or Judicial Review.
8. The court was informed that the plaintiff had previously moved the Judicial Review Division of the High Court, seeking appropriate orders.
9. In answer to the application the plaintiff submitted that the Judicial Review Division of the High Court had a jurisdiction similar to that of the Commercial Division of the High Court. Therefore, the decision of Odunga J., (*In the application for Judicial Review*), was said not to be binding upon this court.
10. Therefore, the applicant reasoned that this court has jurisdiction to hear and determine the application which he had filed, seeking garnishee orders.
11. The plaintiff said that orders that were similar to the ones he was seeking, have been granted, even by the lower courts, against the County Government of Nairobi. It was said that the County Government of Nairobi had never challenged those orders through an appeal.
12. Regrettably, the plaintiff did not make available to the court, the particulars of the cases in which courts had granted garnishee orders against the County Government of Nairobi.
13. In any event, if the said orders were issued by the magistrates' courts, they would not be binding on the High Court.
14. The plaintiff had submitted that the decision of a Judge of concurrent jurisdiction was not binding on me; And he was correct in that regard. Therefore; the plaintiff must be deemed to be fully aware of the position in law, that in the hierarchy of courts, it was only the decisions of higher courts that were binding on courts which were lower in status. Thus, the decisions of the Supreme Court were binding upon all other courts, including the Court of Appeal. And the High Court, together with the magistrates' courts were bound by the decisions of the Court of Appeal, unless the Supreme Court had overturned any such decision.
15. But just like a decision of the High Court cannot be binding on the Court of Appeal or on the Supreme Court, so too, the decisions of the magistrate cannot be binding on the High Court.
16. In determining the application, I take note of the fact that the orders sought to be set aside, were of an extremely limited span of life. It was to last until 6th April 2016.
17. Secondly, the court had not yet ordered that the funds in the bank accounts be attached. A careful reading of the order will reveal that the court was only preserving the funds in the accounts.
18. Thirdly, the court was fully conscious of the fact that the respondents and the garnishee had not yet been accorded a hearing. That is the reason why the court granted leave to all the parties and to the garnishee, to make such applications as they might deem appropriate.
19. I see the application before me as making use of the leave which the court had granted.
20. I am persuaded that if the bank accounts of the County Government were frozen, that would most probably paralyze the functions of the said County Government. Therefore, if the orders made on 7th March 2016 were still in force I would have set them aside. I may, possibly, have imposed some terms, in such a scenario. But the orders lapsed with effluxion of time. Therefore, I do not need to set them aside.
21. Nonetheless, it is appreciated that at the time the applicant moved the court, the orders in issue were still in force. Therefore, it cannot be said that the application before me was un-necessary at the time it was brought.

22. As regards the question whether or not the Ruling by Odunga J. was binding on me, the answer is in the negative.

23. But the court cannot ignore the fact that the plaintiff had sought relief before another Judge of concurrent jurisdiction. I say no more, because it is conceivable that the parties may yet canvas that issue.

24. Finally, I direct that the plaintiff's application dated 2nd March 2016 should now proceed to hearing *inter partes*.

25. Costs of the application dated 8th March 2016 shall be in the cause in the application dated 2nd March 2016. In other words, if the application dated 2nd March 2016 is successful, the plaintiff will also be deemed to have been awarded the costs of the application dated 8th March 2016. But if the application dated 2nd March 2016 is dismissed, it will be deemed that the costs of the application dated 8th March 2016 had been awarded to the 2nd Defendant.

DATED, SIGNED and DELIVERED at NAIROBI this 7th day of June 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of:

Plaintiff in person for the Plaintiff

Miss Omari for Muriuki for the 1st Defendant

Mokua for Mogaka for the 2nd Defendant

Mokua for Kabati for the 3rd Defendant

Miss Omari for Muriuki for Garnishee

Collins Odhiambo – Court clerk.