



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 611 OF 2003

LINDA WATIRI MURIUKI.....PLAINTIFF

V E R S U S

NEVILLE PATRICK GIBSON WARREN.....1ST DEFENDANT

DANIEL JAMES CORRY McVICKER.....2ND DEFENDANT

KENNETH HAMISH WOOLER KEITH.....3RD DEFENDANT

ZULFIKAR H. ALIBHAI.....4TH DEFENDANT

(All practising under the firm

name of *Daly & Figgis, Advocates*)

R U L I N G “C”

1. By a consent letter dated 18th of December, 2003 and filed in court on 8th January, 2004, the parties herein agreed on how to proceed towards disposal of this suit. An order was entered in terms of that consent on 9th January, 2004. The only role reserved for the court by that consent is to be found in clause (a) thereof. That clause provides as follows:-

“(a) THAT this Honourable Court be pleased to determine as a single issue, whether the terms of the Partnership Deed dated the 31st October 1990 applied to the partnership between the Plaintiff and the Defendants.”

Certain consequences would flow from determination of that issue.

2. That single issue was determined by the Court in a judgment dated and delivered on 14th December, 2004. The Court found that the terms of the Partnership Deed dated 31st October, 1990 did not apply to the partnership between the Plaintiff and the Defendants. An appeal against that judgment was struck out by the *Court of Appeal*.

3. Pursuant to the terms of the aforesaid consent order, a Senior Accountant was eventually appointed by the Court to value the Plaintiff’s share in the partnership. The Senior Accountant found that value to be KShs 19,608,272/00.

4. It is common ground that pursuant to the consent order the Defendants were jointly and severally enjoined to pay to the Plaintiff the said sum of KShs 19,608,272/00. The Plaintiff has not been paid this sum so far. Two of the Defendants have since died and one left the partnership and cannot be traced. Only the 3rd Defendant is now available.

5. The Plaintiff has now sought by **notice of motion dated 18th March, 2014** for leave of the Court to institute contempt proceedings against the 3rd Defendant for being in contempt of the aforesaid consent order. The 3rd Defendant has opposed the application by his **replying affidavit filed on 28th May, 2014** upon the grounds that he is not in contempt of the Court order, and that in any event contempt proceedings in the circumstances of this case would be misguided, unprocedural and not available in law. He has also stated that after the Defendants' appeal was struck out by the **Court of Appeal** they applied for leave to file notice of appeal and record of appeal out of time; that the said application was dismissed by a single Judge of the **Court of Appeal**; and that the application is now pending before a full bench of that Court.

6. I have considered the submissions of the learned counsels appearing. The issue whether or not the Plaintiff should be permitted to recover what is due to her from the Defendants by way of contempt proceedings in the circumstances of this case will be better and fully canvassed and decided in substantive contempt proceedings. The circumstances of this case are unique and the contempt proceedings themselves will be important for our jurisprudence.

7. I will in the circumstances give leave to the Plaintiff to bring contempt proceedings. The substantive application must be filed within 14 days of delivery of this ruling. Costs of the present application will be in that substantive application. Those will be the orders of the Court.

DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF JULY 2014.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JULY 2014