

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 42 OF 2014

NEDIAMTHETTE DEVASIA ANTONY.....PLAINTIFF/APPLICANT

VERSUS

BETH WANGARI NJOROGE.....DEFENDANT/RESPONDENT

RULING

There are two applications before me. The application dated 20/6/14 was filed by Mutonyi, Mbiyu & Co. Advocates on behalf of the plaintiff/applicant in which they seek an order that pending hearing and determination of the suit, the court do issue an interim injunction restraining the respondent by herself, her servants or agents from breaching the Partnership Deed dated 28/10/2013 and more particularly from interfering with or preventing the applicant from undertaking his duties as the director of the partnership as relates to the day to day management, running and administration and conduct of the affairs of the partnership, approval of expenditure of the partnership and recruitment or termination of employees; preventing the applicant from accessing St. Beth Secondary School and other High Schools more specifically his offices in the said schools and prevent the respondent from collecting school fees, or having fees deposited in bank accounts other than the partnership accounts of Family Bank Ltd Nakuru. The grounds upon which the application is predicated are found on the face of the application and the affidavit of the applicant, Nediamthette Devasia Antony which are that the plaintiff and defendant are partners pursuant to a Partnership Deed dated 28/10/2013. The applicant is a director of the partnership and his responsibility was the running of the business, approval of expenditure and recruitment of staff; that in breach of the said partnership the defendant was undertaking the plaintiff's duties and has opened another Bank account in respect of the business; that if not stopped, the plaintiff will suffer irreparably because he has contributed to the business financially and has experience in running schools and has ran the schools since early 2014 but that the respondent has no background in running of schools; that the respondent does not stand to lose anything. He urged the court to invoke **Section 7** of the **Arbitration Act** which grants this court jurisdiction to grant interim orders for protection before or during arbitral proceedings. Mr. Mutonyi, counsel for the plaintiff urged that the application was not opposed and the orders should be granted.

The 2nd application is dated 30/6/2014 filed by Ndeda & Co Advocates on behalf of the defendant in which the defendant prays that these proceedings be stayed pending resolution of the dispute raised herein through arbitration in accordance with the Partnership Deed and that the court should decline to grant the interim orders sought in the application dated 20/6/2014. The defendant does not deny the Partnership Deed and admits that in June 2014, a dispute arose between the plaintiff and defendant over the running of the schools and that if any interim orders are given, they will be prejudicial to her because the plaintiff used the school resources to enrich himself and the schools are now managed by head teachers who make decisions for which they are accountable. The allegations against the plaintiff are listed at paragraph 7-13 of the defendant's affidavit in support of the application.

The plaintiff opposed the application vide a replying affidavit sworn by the plaintiff on 17/7/2014 in which he denies allegations made against him and instead blames the defendant for employing two people to collect fees and take to her house; that all fees collected by him were banked and he attached a statement of account (Ex.2); that the plaintiff employed Evans Muriithi to manage the schools in accordance with the Partnership Deed and that he did not organize remedial classes but headmistresses did. He blames the defendant for wanting to throw out the plaintiff from the business after he has revived the schools which had stopped operations in 2008. The plaintiff also attached a letter dated 11/7/2014 from the teachers who were claiming their unpaid salaries for June 2014.

I have considered the two applications. The partnership between the parties is not denied. It is also not denied that the said Partnership Deed provided for arbitration in the event of a dispute. The only issue here is whether this court can grant an interim order of injunction as prayed by the plaintiff. **Section 7** of the **Arbitration Act** gives this court jurisdiction to grant interim relief before or during arbitral proceedings if deserved. In this case, either partner blames the other for breach of the Partnership Deed.

From the affidavits, it is apparent that the school buildings belong to the defendant but both the plaintiff and defendant have contributed monies towards the management of the schools. One partner cannot therefore purport to evict the other from the management of the schools or replace the employees with others unilaterally unless in accordance with the deed.

Having heard the positions taken by both parties, no doubt the two cannot agree on the management of the schools. Each party has taken its own position and making allegations against each other. It is not possible for this court to go into the merits of the dispute at this stage to determine who is taking the correct position. That is supposed to be resolved during arbitration. If this court were to grant orders of injunction, it would be mandatory in nature, that is, to return the plaintiff to management but the court cannot be in a position to enforce the said orders. The orders that the court would give at this stage would have to ensure that the school continues to run without interruption but not to court more controversy in the schools. For the above reason, this court is of the view that an order of injunction as prayed by the plaintiff would not be in the best interests of the schools and for that reason, I decline to grant the prayer sought in the notice of motion. I direct that the parties proceed to arbitration in terms of paragraph 11 of the Partnership Deed. Costs to abide the arbitration.

DATED and DELIVERED this 1st day of October, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

N/A for the plaintiff/applicant

Mr. Mongeri for the defendant/respondent

Kenney – Court Assistant