



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISC APPLICATION NO. 1059 OF 2007

BUILECON ASSOCIATESPLAINTIFF

-VERSUS -

KENYA TEA DEVELOPMENT AGENCY LTD (KTDA).....DEFENDANT

RULING

1. The matter before the court is an application dated 11th July 2011. The said application was filed by the Law firm of **P.K. MUREITHI ADVOCATES**.
2. The first relief sought by the application was that the Law firm of P.K. Mureithi & Company Advocates be granted leave to come on record as advocates for the plaintiff.
3. Secondly, the application sought the review of the interest amount, from Kshs.4,613,793/70 to Kshs. 5,334,020/60.
4. Finally, this court was asked to order that the costs of the application should be in the cause.
5. According to the applicant, its new lawyers required leave of the court so as to represent them because there had already been a final determination of the case.
6. The applicant went on to say that there had been a mathematical error in the calculations of the interest amounts awarded to the applicant. Therefore, the applicant invited the court to re-calculate the sums due, and to thereafter award them the sum of Kshs. 5,334,020/60, instead of the sum which they had been earlier awarded, which was Kshs. 4,613,793/70.
7. The Defendant has raised a Preliminary Objection to the application being heard by this court. The basis for that objection was that the application had already been heard and determined.
8. The plaintiff confirmed that on 20th March 2012, the application was dismissed by Hon. R. Nyakundi. The learned Deputy Registrar rejected the prayer that sought to allow the firm of P.K. Mureithi & Company Advocates to come on record as the advocates for the plaintiff. That being the position, it followed that the other prayer in the same application could not be granted as they had been sought by an advocate who was not on record for the applicant.
9. Following the dismissal of the application, the plaintiff filed another application on 11th July 2012. The said application is dated 10th July 2012.

10. The reliefs sought in the application dated 10th July 2012 were as follows;

- i. *Review of the Orders made on 20th March 2012, so as to allow the firm of P.K. Mureithi & Company Advocates to come on record for the applicant.*
- ii. *Grant the application dated 11th July 2011, under the slip rule.*
- iii. *In the alternative, grant leave to applicant to appeal against the orders made on 20th March 2012.*

11. Hon. R. Nyakundi gave due consideration to the application dated 11th July 2012 and reviewed his previous Ruling. He now allowed the firm of P.K. Mureithi & Company advocates to come on record for the applicants.

12. At this moment in time, the Defendant said that the application dated 11th July 2011 had already been heard and determined, as it was dismissed on 20th March 2012.

13. Whereas it is true that on 20th March 2012 the Learned Deputy Registrar dismissed the application dated 11th July 2011, we cannot overlook the fact that on 28th November 2011, Hon. R. Nyakundi reviewed his decision dated 20th March 2012, and allowed the firm of P.K. Mureithi & Company Advocates to come on record.

14. When granting leave to the Law firm to represent the plaintiff henceforth, the Learned Deputy Registrar, ordered the applicant to pay the costs of the application.

15. That order on the costs of the application, suggests that the whole application had been dealt with by the Deputy Registrar.

16. Furthermore, it is evident, from the Ruling dated 28th November 2012 that the Learned Deputy Registrar was clear about the purport and intent of the plaintiff's application which he was determining. I so find because he said;

"I have considered the Notice of Motion by the applicant and the prayers sought, together with the annexatures thereto.

The issue in contention revolves around the computation of the liquidated amount due and owing from the respondent".

17. In effect, the court was clearly dealing with the Notice of Motion in its entirety. The court did not limit itself to only a portion of the application.

18. The parties did not ask the court to limit itself to only some portions of the application, nor did the court have any reason to handle one part of the application.

19. In the circumstances, I uphold the Preliminary Objection, because the Learned Deputy Registrar already rendered a Ruling on the application dated 11th July 2011.

20. If the court failed to adjudicate on any issues raised in that application that would not be a basis for re-opening the application. It may possibly form the foundation for an appeal.

21. Accordingly, although the Law firm of P.K. Mureithi Advocates have now come on record as the advocates for the plaintiff, I find and hold that there is nothing which is pending on the application dated 11th July 2011, which can be prosecuted.

22. The costs of the Preliminary Objection are awarded to the Defendant.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of November 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

.....for the Plaintiff

.....for the Defendant

Collins Odhiambo – Court clerk.