

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1761 OF 1998

ROBERT EZEKIEL CHERUIYOT.....PLAINTIFF

VERSUS

KENYA CO-OPERATIVE CREAMERIES LTD.....DEFENDANT

RULING

On 28th October, 1998 this court ordered under H.C. C. C. NO. 1791 of 1998 that H.C.C.C. NO. 1761 be dismissed; that the defendant do vacate the suit raises within 7 days from the date of the service of the order and that the costs of the application be borne by the defendant.

There is now before me an application by way of Notice of Motion under order 49 Rule 5 and Order 39 Rule 1 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for orders that the order of 28th October 1998 be reviewed on the basis that there is an error apparent on the face of the order; in the alternative that the period within which the applicant should vacate the suit premises be extended to at least 30 days from the date of service of the order; and that the plaintiff/respondent be restrained from evicting the defendant/applicant until this application is heard and finalised.

The grounds upon which the application is based have been set out and there is an affidavit in support thereof sworn by one Robert E. Cheruiyot, the applicant.

The learned counsel for the plaintiff/respondent field grounds of opposition. Both learned counsel have also addressed the court on the issues.

It will be recalled that the two suits were consolidated on 24th July, 1998 when both learned counsel appeared before Aganyanya J. The order was by consent. My understanding of the said order was that even the applications in the said suits were consolidated. Indeed when the preliminary point of law was raised both learned counsel addressed the two applications with that in mind. When the court delivered its ruling on 28th October, 1998 the issue was also addressed. The contents of the said ruling are clear and unequivocal.

With respect therefore, there is no room to say that the application for eviction was not argued. I see no error apparent on the face of the record. I note also that order 44 of the Civil Procedure Rules under which such an order can be reviewed was not cited, it, would not leave altered my finding herein.

The applicant has known all along that if he were to lose his application in favour of the plaintiff, eviction would follow. I have noted the prayer for extension of time. But justice must look at both sides. I have weighed one thing against the other and doing the best I can I consider the extension of time by 30 days to be oppressive to the owner of the premises. Accordingly that prayer also fails but the applicant shall have 7(seven) days to vacate the premises from the date hereof otherwise he shall be evicted accordingly.

The upshot is that the application is hereby dismissed with costs.

Orders accordingly.

Dated at Nairobi this 13th day of November, 1998.

MBOGHOLI MSAGHA

JUDGE