



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

HCC NO. 1 OF 2018 (OS)

PRIME BANK LIMITED.....INTERPLEADER/APPLICANT

AND

ASSUMPTION SISTERS OF NAIROBI

REGISTERED TRUSTEES1ST.....RESPONDENT

ST. MARY'S MISSION HOSPITAL.....2ND RESPONDENT

WILLIAM CHARLES FRYDA.....3RD RESPONDENT

RULING

1. This is an interpleader suit commenced by way of Originating Summons brought pursuant inter alia to the provisions of Order 34 Rules 1 and 2 of the Civil Procedure Rules. The suit seeks the following Orders :-

(i). That this Honourable Court be pleased to give directions in the order issued on 24th November 2017, in Nakuru High Court Civil Suit Number 224 of 2010 as consolidated with Nakuru High Court Civil Suit No. 238 of 2012, Nakuru and specifically paragraph 5 of the said Order.

*(ii). That this Honourable Court be pleased to declare the rightful claimants to account numbers 3*****60, 3*****72, 3*****88, 2*****53, 2*****53 and 3*****67 (redacted) held by the applicant at its Riverside Drive Branch.*

(iii). That upon direction in respect of paragraphs 5 of the said order and declaration of the rightful claimants to the accounts mentioned above, this Honourable Court be pleased to direct the applicant to act on the order accordingly.

(iv). That this Honourable Court do issue a stay of execution of paragraph 5 of the Court Orders issued by the Honourable Court in Nakuru High Court Civil Suit Number 224 of 2010 consolidated with Nakuru High Court Civil Suit No. 238 of 2012 pending the hearing and determination of the Originating Summons application.

(iv). That this Honourable Court be pleased to order that costs of the Originating Summons application be borne by the respondents.

2. It will be seen from the above that the suit herein has been commenced owing to some orders made in the cases Nakuru HCC No. 224 of 2012 and 238 of 2012. The primary question in those two cases was who was to own and operate two hospitals, easily identified as St. Mary's Mission Hospitals, situated in

Langata in Nairobi and Elementaita in Nakuru, as between the 1st and 2nd respondents, and the 3rd respondent herein. I passed judgment that the ownership of the land where the said two hospitals are situated, and their operation, will be with the 1st respondent through the 2nd respondent company which is wholly owned by the 1st respondent.

3. On 23 November 2017, I made further orders directing any bank holding an account relating to St. Mary's Hospitals, not to allow any transactions on the same by any other person other than the 1st and 2nd respondents herein, and to hand over such accounts to the 1st and 2nd respondents herein. That is the said paragraph 5 of the orders made on 23 November 2017. It is arising out of that order that this interpleader has been filed.

4. When the matter first came before me on 17 January 2018, I directed the applicant to give specifics of the five accounts that have been cited by itself in the interpleader motion. A further affidavit was filed which specifies that three of these accounts, being Accounts Nos. 3*****60, 3*****72, and 3*****88 were opened for St. Mary's Mission Hospital. The other two accounts, that is 2*****53 and 3*****67 are accounts opened in the name of the 3rd respondent.

5. It is therefore apparent that only 3 of the cited 5 accounts are for St. Mary's Mission Hospital.

6. I therefore make the following orders (full account details to be in the extracted order) :-

(i). The applicant to henceforth hand over the accounts for the 3 stated accounts, which are in the name of St. Mary's Mission Hospital, that is 3***60, 3*****72 and 3*****88 to the 1st and 2nd respondents.**

(ii). The applicant to allow those accounts to be operated and continued only as may be directed by the 1st and 2nd respondents and not to allow the 3rd respondent, William Charles Fryda, to operate the said accounts in any way.

(iii). I make no orders in respect of the two accounts namely, 2***53 and 3*****67, which are in the personal name of William Charles Fryda.**

(iv). I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 8th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Maina for the applicant.

Mr. Mugo for the 1st and 2nd respondents.

Mrs E.G Mwangi for the 3rd respondent.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU