



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC MISC APP.NO 144 OF 2014**

**NAIROBI CITY COUNTY.....PLAINTIFF**

**=VERSUS=**

**HABIBA ABDULHERMAN HAWA.....1<sup>ST</sup> DEFENDANT**

**MUMTAZ HAWA D/O**

**ABDULREHMAN MOHIDIN HAWA.....2<sup>ND</sup> DEFENDANT**

**AMINA HAWA D/O**

**ABDULREHMAN MOHIDIN HAWA.....3<sup>RD</sup> DEFENDANT**

**MOHIDIN S/O**

**ABDULREHMAN MOHIDIN HAWA.....4<sup>TH</sup> DEFENDANT**

**ATTAIN ADVISORY CONSULTANTS**

**LTD.....PURCHASERS/APPLICANT**

**P.G WAWERU T/A**

**IDEAL AUCTIONEERS.....1<sup>ST</sup> INTERESTED PARTY**

**CHIEF LAND REGISTRY.....2<sup>ND</sup> INTERESTED PARTY**

**HON.MIKE MBUVI SONKO....INTENDED 3<sup>RD</sup> INTERESTED PARTY**

**LILLY WANJIKU NJUGUNA...INTENDED 4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. This is a Ruling in respect of a notice of motion dated 28<sup>th</sup> June 2016 brought by the Plaintiff/Applicant. The application seeks the following reliefs:-

**i. Spent**

**ii. Spent**

**iii. That pending the hearing and determination of the miscellaneous suit herewith, the intended third party, Honourable Mike Sonko whether by himself, agents, servants or otherwise be restrained from further uttering, publishing or causing to be published in any way whatsoever, any news, items, videos, images, statements, articles or words on internet, newspapers, Facebook, Twitter, you tube, WhatsApp, or any other medium whatsoever on all matters concerning this ongoing case. That the costs of this application be borne by the intended third interested party.**

2. The applicant contends that during a Senate Public Accounts and Investments Committee meeting held on 15<sup>th</sup> June 2016, the Respondent Honourable Mike Sonko who is the Senator for Nairobi made utterances touching on this case. That he stated that the applicant has been taking away property belonging to Nairobi residents and that Nairobi Governor Evans Kidero is a murderer. The applicant further contends that the Respondent is out to tarnish the name of the applicant and its Governor Evans Kidero. That the Respondent is doing so for his own political interests and that an injunction should issue stopping him from making any further utterances which are giving the applicant and its governor a bad name.

3. The applicant further contends that the Respondent's utterances are meant to arm-twist the court into granting him his prayer in an application in which he wants to be enjoined as an interested party. That the actions of the Respondents are only meant to scuttle the case before the Court.

4. The Respondent has opposed the applicant's application through grounds of opposition dated 7<sup>th</sup> October 2016, and filed in Court on 10<sup>th</sup> November 2016. The Respondent raises the following grounds:-

**1. The application is incompetent, misconceived and or is unsustainable as it seeks to bar communication and/or information provided within the privileged precinct of the Senate.**

**2. The orders sought are prejudicial as they contravene principle of separation of powers existing between the Legislature and the Judiciary.**

**3. The orders are sought by an entity not party to this suit in the misguided disguise that it affects the Plaintiff.**

**4. This application is incompetent as the orders sought are not supported by a substantive suit.**

**5. The orders seek to restrain the production of information sought by a senate committee through summons issued to the third intended interested party thus interfering with its powers and privileges.**

**6. That the supporting affidavit is incompetent as it has been executed by an individual not affected by the complaint and who is the subject of the fraudulent transactions giving rise to this suit.**

**7. That this application is premature as it has been filed against an entity not yet admitted as a party to this suit.**

**8. That the filing of this application is motivated by ill-will and malice as it is intended to gag the intended third interested party from overseeing the functions of the County Government in line with Article 96 of the Constitution.**

5. I have considered the applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the applicant. This is an application seeking to restrain the

Respondent from further publication of utterances which are alleged to have been made by the Respondent. The application is mainly premised on the alleged utterances by the Respondent made on 15<sup>th</sup> June 2016. The particular alleged utterances have been stated in paragraph 4 of the applicant's supporting affidavit sworn on 28<sup>th</sup> June 2016.

6. There is absolutely no proof that the Respondent uttered the words attributed to him in the supporting affidavit. The applicant is contending that since the Respondent did not file a replying affidavit that should be taken that he admitted these allegations. This is an application seeking to bar the Respondent from making any further utterances. It was incumbent upon the applicant to provide proof that the Respondent actually uttered those words or commented on the case before the court. The court cannot act on allegations which are not proven to issue injunctive orders.

7. The Respondent has just made an application seeking to be enjoined in these proceedings. He is yet to be enjoined and there is therefore no basis upon which injunctive orders can be issued against him. The applicant is making unsubstantiated allegations that the Respondent made those utterances as a way of arm-twisting the court into allowing his application for joinder in these proceedings. Courts decide applications based on their merits and the law. No person can intimidate the Court into granting favorable orders.

8. Neither the Governor of Nairobi nor the Respondent is a party to this case. The parties to this case should therefore not seem to litigate on their behalf. If the Governor of Nairobi wanted to pursue the Respondent, he should do so through separate proceedings but not try to get injunctive orders in a case where he is not a party. I do not see any merit in this application which is hereby dismissed with costs to the intended third interested party.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 31<sup>st</sup> day of July 2017.**

**E.O.OBAGA**

**JUDGE**

In the Presence of :-

Mr Kamande for Prof Mumma for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants

Mr Omosa for Mr Omotii for 1<sup>st</sup> Interested Party

Court Assistant: Hilda

**E .O. OBAGA**

**JUDGE**