



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 224 OF 2010

WILLIAM CHARLES FRYDA..... PLAINTIFF

VERSUS

ASSUMPTION SISTERS OF NAIROBI

REGISTERED TRUSTEES..... 1ST DEFENDANT

ST. MARY'S MISSION HOSPITAL 2ND DEFENDANT

CONSOLIDATED WITH NAKURU ELC NO. 238 OF 2012

REGINA PACIS UNIVERSITY COLLEGE

(THROUGH THE BOARD OF TRUSTEES)..... 1ST PLAINTIFF

ASSUMPTION SISTERS OF

NAIROBI REGISTERED TRUSTEES..... 2ND PLAINTIFF

VERSUS

WILLIAM CHARLES FRYDA DEFENDANT

RULING

(Application for a break in order and police assistance to enforce a Judgment; applicants and respondents having had a dispute over ownership and management of certain hospitals and properties; Judgment entered for applicants; respondent required to hand over operations of the hospitals in issue but not doing so; application allowed)

1. The application before me is that dated 6 November 2017 filed by the Assumption Sisters of Nairobi (ASN) and St. Mary's Mission Hospital (the company), and they have sought the following orders :-

(i) Spent (a certification of urgency).

(ii) That this Honourable Court be pleased to grant the 2nd defendant and/or its appointed agents/employees, authority to break into and gain forceful entry into LR No. 27228 and 27229 situated in Langata in Nairobi in execution of the orders of the court on 28 September 2017.

(iii) That this Honourable Court be pleased to grant the 2nd defendant and/or its appointed agents/employees, authority to break into and gain forceful entry into LR No. 9361/10 situated in Elementaita in Nakuru in execution of the orders of the court on 28 September 2017.

(iv) That this Honourable Court be pleased to order the Officer Commanding Langata Police Station (OCS) or any other officer of the said station above the rank of Assistant Inspector of Police to provide security and police assistance of the execution of Order (ii) above.

(v) That this Honourable Court be pleased to order the OCS Gilgil Police Station or any other officer of the said station of the rank above an Assistant Inspector of Police to provide security and police assistance of the execution of Order 3 above.

(vi) That the costs be in the cause.

2. No replying affidavit nor Grounds of Opposition were filed to oppose the motion, but I did allow Mrs. Mwangi, learned counsel for the respondent, to make submissions on points of law.

3. This application has its genesis in the judgment of this court delivered on 28 September 2017. The dispute in the case revolved around the ownership and management of two hospitals, one situated in the land parcels LR No. 27228 and 27229 in Langata in Nairobi, and the other in LR No. 9361/10 located in Elementaita in Nakuru, both easily identified as St. Mary's Mission Hospitals. There was also a third parcel of land in issue, registered as Kiine/Rukanga/2846. In my judgement, I held that the suit properties should be held by St. Mary's Mission Hospitals, a company limited by guarantee and that they should also be the persons entitled to operate the two hospitals. The said company is wholly controlled by ASN. During the period that the suit was being heard, the respondent, Dr/Father Charles William Fryda, was the one in possession of the suit properties and in charge of the hospitals therein.

4. After delivery of the judgment, the respondent filed an application for stay pending appeal, which application I heard and dismissed on 31 October 2017.

5. In this application, it is averred that despite the judgment and the dismissal of the order of stay pending appeal, the respondent has failed to cede possession of the hospitals in issue. The applicants have averred that they have written letters asking for a hand over and have even attempted to visit the suit premises for a smooth hand over in vain. It is also stated that the respondent has refused to furnish the applicants with the bank accounts as ordered in the judgment. It has been said that when the applicants went to the said hospitals with a view of taking over their administration, they were met with a lot of hostility from the respondent and his agents/employees who denied them access.

6. Mrs. W.G. Wambugu for the applicants urged me to allow the application so as to give effect to the judgment. On her part, Mrs. Mwangi for the respondent was of opinion that the application is premature and that the process of execution laid down in Order 22 has not been followed.

7. I have considered the application and the rival submissions. There is no question that in my judgment, I did order the respondent to deliver possession of the suit premises to the applicants, and also ordered him to avail details of the accounts of the hospitals and also submit to an audit. I questioned Mrs. Mwangi as to whether her client has complied with the judgment and she conceded that he has not. What Mrs. Mwangi has raised in her reply, are to me, mere technical issues, relating to execution of a judgment, but they do not negate the fact that there has been non-compliance with the judgment and the fact that the respondent has denied the successful parties access to the suit premises and hospitals therein. I refuse to be shackled by mere technicalities and I have support in Article 159 (2) (d) of the Constitution.

8. It is apparent to me that the respondent will not comply with the court order unless some enforcement mechanisms are employed in the very form that the applicants have presented to this court. If I do not allow the applicants entry into the premises under security of the requested officers, I really do not see how the successful applicants will ever gain possession of the suit premises and take control of the hospitals therein.

9. I frankly see no reason why I should not allow this application, for if I do not allow it, the successful litigants will not have the benefit of the judgment. I therefore allow it and issue all orders sought in prayers 2, 3, 4, and 5 of the application. In addition to the above, and in light of the fact that the respondent has also not handed over the accounts, I do issue an order 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 applicants and/or their agents, and to hand over such accounts to the applicants herein.

10. In so far as this application is concerned, I will award costs to the applicants, as against the respondent, and any costs that the applicants may incur in enforcing the orders of this court will also be shouldered by the respondent.

11. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 23rd day of November 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mrs. W. G. Wambugu for the Applicants

Mrs. E. G. Mwangi for the respondent

Court Assistant: Carlton Toroitich