



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

MISC APPLICATION NO. 11 OF 2017

IN THE MATTER OF THE JUDICATURE ACT

AND

IN THE MATTER OF AN APPLICATION FOR CONTEMPT OF COURT PROCEEDINGS

BETWEEN

EPHANTUS MIHINGO NGOTHO.....APPLICANT

VERSUS

BARNABAS KIPROP KIPTUM.....RESPONDENT

RULING

INTRODUCTION

This ruling is in respect of a Notice for a Preliminary Objection dated 3rd May, 2017 filed by the Advocates for the Respondent.

The Respondent raises the Preliminary Objection on the following grounds;

1. That there is no appeal pending herein.
2. That the current Application is a miscellaneous one and there is no evidence of any disobedience herein.

The 3rd ground was not clear on what the Advocate wanted to express. The preliminary objection was argued by Counsel for the respondent who submitted that the contempt of court proceedings ought to have been filed in the case where the contempt occurred. He stated that the same should have been filed in CMCC no. 653/11 and not through a miscellaneous application.

Mr. Chebii further submitted that the enabling provisions of the law do not indicate that there is a new Contempt of Court Act 2016. It was also submitted by Counsel for the respondent that the court is being asked to punish a 3rd party who is not a party to the suit. Counsel further submitted that the applicant had been ordered to deposit Kshs. 100,000/ and there is no evidence that such amount was deposited or whether such account was opened. He prayed that the application be dismissed with costs and the preliminary objection be upheld.

The preliminary objection was opposed by counsel for the applicant and he relied on the celebrated case on Mukisa Biscuits on preliminary objections. He submitted that Preliminary Objections should purely be on points of law and not facts. The court should not look for evidence from elsewhere. Mr. Nyamweya submitted that all the issues raised by Counsel are questions of fact. He stated that the Judicature Act gives the court jurisdiction to handle this matter. He therefore urged the court to dismiss the preliminary objection.

Analysis and determination

This is a preliminary objection filed by the respondent on the ground that there is no pending appeal and that the current application is brought vide a Miscellaneous application.

I have looked at the application together with the submissions of both Counsel and the relevant law applicable. The applicant should be aware that Contempt of court Act was enacted in 2016 and has already taken effect. Having said that, it is trite law that preliminary objections should purely on points of law. The court should be able to determine the issues raised without being asked to look for evidence elsewhere to ascertain the same.

It is important to note that the respondent has alluded to issues of fact which require the court to ascertain by looking for evidence elsewhere. For example, when counsel submits that the applicant had been ordered to pay Kshs. 100,000/ and that there is no evidence that such amount was deposited and no account was opened, the court is left wondering where to verify such information. These are facts which are not points of law.

There is no need of belaboring further as this preliminary objection does not meet the threshold of Mukisa Biscuits case. All those facts can be canvassed during the hearing of the application. Counsel can discredit the application then.

The upshot is that the preliminary objection is dismissed as it has no merit.

Hearing of application dated 11th April 2017 on 31/1/18

Dated and delivered on this 22nd day of November, 2017

M.A ODENY

JUDGE

Read in the open court in the presence of:

Mr. Mukabane holding brief for Mr. Chebii for Respondent

Mr. Koech – Court Assistant

In the absence of C.D Nyamweya for Applicant.