



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 179 OF 2015

DURSOMA INVESTMENTS LIMITED.....PLAINTIFF

=VERSUS=

1. CHIRUMA BNDO MUNDALI

2. TROPICAL TREASURE LTD

3. THE CHIEF LAND REGISTRAR.....DEFENDANTS

RULING

1. The Application by the 1st Defendant is dated 4th November, 2016 seeking for the following orders:-
 - (a) **THAT the honourable court be pleased to arrest the ruling scheduled for the 2nd December, 2016 (sic) and instead list the matter for direction before ruling can be made.**
 - (b) **THAT the costs of this application be in the cause.**
2. The Application is premised on the grounds that the Plaintiff's Application dated 22nd September, 2016 came up for hearing on 3rd November 2016; that the 1st Defendant's advocate had an emergency in the morning of the hearing and had to take a loved one to hospital and that the said advocate arrived in court after the matter had been given a Ruling date.
3. According to the 1st Defendant's advocate, he instructed an advocate to place the matter aside; that the matter was recalled just before he arrived in court and that directions were given in his absence.
4. The 1st Defendant's advocate wants proper interpartes directions given before the case is determined.
5. In his Grounds of Opposition, the Plaintiff's advocate averred that this matter was scheduled for the hearing of three (3) Applications on 3rd November 2016; that the Application is seeking a review of the Ruling of this court dated 24th June, 2016 which was not opposed and that on the day the Application came up for hearing, the 1st Defendant's counsel was represented in court by Mr. Obaga.
6. The Plaintiff's/Respondent's counsel averred that the absence of the 1st Defendant's counsel in court on

3rd November, 2016 was inconsequential because they had not filed and served a response in respect to the Application for review.

7. According to counsel, the response to the Application for review was only filed after the Application dated 3rd November, 2016 had proceeded for hearing and that there are no proper grounds to arrest the Ruling of this court.

8. The advocates appeared before me today and reiterated the depositions in the Affidavit and the Grounds of Opposition respectively. I have considered the said oral submissions.

9. The record shows that on 22nd August, 2016, the Plaintiff/Respondent filed an Application dated 29th August, 2016. the Application was essentially seeking for review of the Ruling of this court that was delivered on 24th June, 2016. in the said Ruling, the court dismissed the Plaintiff's Application for injunctive orders with costs. The court had allowed the 1st Defendant's Application for injunction in respect to the same suit property in Malindi ELC NO. 157 of 2015.

10. The Application dated 22nd August, 2016 was placed before the court on 29th August 2016 and the same was certified as urgent. When it came up for interpartes hearing on 13th September, 2016, it was fixed for hearing on 11th October, 2016.

11. On 28th September, 2016, the Plaintiff filed another Application for review and for an order of status quo dated 28th September, 2016, the same was placed before Chitembwe J.

12. When the second Application for review came up for hearing under certificate of urgency on 29th September, 2016, Chitembwe J certified it as urgent and directed as follows:-

“In order to avoid parties fighting each other, there is need to maintain status quo. I do grant prayers three(3) and four (4) on the interim basis. The Application is listed for further hearing on 12th October 2016”.

13. Before the orders of Chitembwe J, were granted, this court had already fixed the Application dated 28th August, 2016 for 11th October, 2016. The matter therefore came up for interpartes hearing of the two Applications, together with another Application for consolidation, on 11th October, 2016.

14. On 11th October, 2016, Ms Karuki appeared for Mr. Muchiri for the Defendants/Applicants. Ms Kariuki informed the court that they had not been served with the two Applications and that they had just seen the matter on the cause list. Ms Kariuki was aggrieved with the ex parte orders that were granted by Chitembwe J on 29th September, 2016 in which the Judge ordered for status quo to be maintained pending the hearing of the two Applications for review.

15. Mr. Abdi, counsel for the Plaintiff informed this court that they had served MS Gikandi advocate with the two Applications because he is the one who appeared for the Defendants in both matters.

16. Due to the urgency of the issues that were raised by both advocates, and after hearing counsels on the merits and demerits of the orders of Chitembwe J, this court directed the parties to appear before it for the hearing of the Applications for review and consolidation on 3rd November, 2016. This court also conceded to the oral application of the 1st Defendant's counsel and set aside the ex parte orders that were granted by Chitembwe J, thus reinstating the orders of injunction that were in favour of her client.

17. When the Applications for review and consolidation came up for hearing on 3rd November, 2016, Mr. Obaga held brief for Mr. Muchiri, counsel for the 1st Defendant/Applicant while Mr. Hassan appeared for the Plaintiff/Respondent.

18. Mr. Hassan informed the court that the firm of Mr. Muchiri had not served them with any response to the Applications for review and consolidation and was ready to proceed with the hearing of the three Applications. Mr. Obaga on behalf of Mr. Muchiri stated as follows:-

“Let us file submissions”.

19. The court then directed the parties to argue the Applications that morning, which Mr. Hassan did. Mr. Obaga walked out of court and did not participate in the hearing. The court reserved its Ruling for 1st December, 2016.

20. The above chronology of events shows that Mr. Muchiri was represented by Mr. Obaga.

21. Indeed, the record shows that Mr. Obaga did not seek the indulgence of the court as submitted by the 1st Defendant's/Applicant's advocate.

22. In view of the fact that there was no Application for adjournment on 3rd November 2016, and considering that no evidence has been placed before this court by the 1st Defendant's counsel to show that he gave to Mr. Obaga different instructions when the matter came up for hearing on 3rd November, 2016; and in the absence of any medical report to show that Mr. Muchiri's loved one was ill on the said date, I find that no good reason has been given to arrest the Ruling of this court.

23. I shall not, at this juncture, comment on the Replying Affidavit that was filed by the 1st Respondent in respect to the Applications for Review on 3rd November, 2016, which is said to have been filed after the Applications had been argued. My comments on the said Replying Affidavit will be known in my Ruling of 1st December, 2016.

24. For those reasons, I dismiss the Application dated 4th November, 2016 with costs.

Dated, signed and delivered in Malindi this 9th day of November, 2016.

O. A. Angote

Judge