



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 72 OF 2007

MAX INT'L LIMITED.....PLAINTIFF/APPLICANT

=VERSUS=

BRUNO PEZZOTTA.....DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. On 20th June, 2014, I set aside the Ruling of this court delivered on 8th June 2009 and the subsequent execution proceedings on the ground that the advocate who prosecuted the Application for which led to the Ruling of 8th June, 2009 was an unqualified person.
2. The Plaintiff/Applicant has now filed an Application dated 27th June, 2014 in which he is seeking for the following orders:

(a) That this Honourable Court be pleased to review its Ruling and Orders issued herein on 20th June 2014 with a view of setting aside the same and in its place do strike out with costs the Defendant's Application dated 5th February 2014.

(b) THAT the costs of this application be borne by the Defendant.

The Plaintiff's/Applicant's case:

3. The Plaintiff's Application is premised on the grounds that he has discovered new and important evidence which was not available earlier; that the application dated 5th February 2014 which led to the Ruling of 20th June, 2014 was prepared by an unqualified person and that that fact was not within the knowledge of the Plaintiff.
4. It is the Plaintiff's deposition that in view of the fact that Mr. James Gekonge Mouko did not have a practicing certificate for the year 2014, the application and proceedings conducted by him are a nullity *ab initio* with no legal effect.

The Defendant's/Respondent's case:

5. The Defendant/Respondent filed a Replying Affidavit and deponed that his then advocate renewed his practicing certificate within the required window and therefore he was qualified to practice law in the year 2004.
6. The Respondent deponed that he had no information that his former advocate had not been issued

- with a practicing certificate and that he should not be punished for that and that in any event the proceedings which led to the entry of summary judgment were a nullity and cannot be reinstated.
7. The Plaintiff's/Applicant's advocate filed submissions which I have considered.

Analysis and findings:

8. The Application that gave rise to my Ruling of 20th June 2014 was signed by Mr. James G. Mouko on 5th February 2014, under a certificate of urgency.
9. According to the letter dated 11th July 2014 by the Law Society of Kenya, the said advocate was not certified to practice law as at 5th February 2014.
10. Indeed, the said advocate did not respond to the allegations that as at 5th February, 2014 when he signed the certificate of urgency accompanying the Notice of Motion of 5th February 2014, he was an unqualified person incapable of signing pleadings.
11. What is interesting is that the advocate who signed the pleadings of 5th February 2014 sought to have the summary judgment entered in favour of the Plaintiff set aside on the grounds that the Plaintiff's then advocate did not have a practicing certificate when he argued the Application for summary judgment dated 20th January 2009. I allowed his application and set aside the Ruling of this court on that ground. Now the same advocate also did not have a practicing certificate as at 5th February 2014 when he moved this court to set aside the Ruling allowing the application for summary judgment.
12. Obviously, I cannot depart from my Ruling of 20th June, 2014, in which I held that where proceedings are conducted in court by an unqualified person, such proceedings and the orders emanating therefrom are a nullity ab initio.
13. Consequently, the Application by the Defendant dated 5th February, 2014 and the orders emanating from that Application are a nullity. The Application and my orders of 20th June, 2014 being a nullity are hereby set aside.
14. Having set aside the Application and my Ruling of 20th June, 2014, does it mean that the Summary Judgment which I had set aside in my Ruling of 20th June 2014 remains on record? That should be the ideal position.
15. However, this court's attention has already been drawn to the fact that the advocate who prosecuted the Application that gave rise to the summary judgment was an unqualified person. It therefore does not matter that I have set aside my Ruling of 20th June 2014. The Ruling of 8th June, 2009 and the subsequent execution proceedings remain an illegality and incapable of enforcement notwithstanding that I have set aside the Application which gave rise to my orders of 20th June, 2014.
16. As was held in the case of **Scott Vs Brown Dopering, MCNAB (3) (1892) 2 QB 724**, the court should not allow itself to be made an instrument of enforcing obligations alleged to arise out of a transaction that is illegal if the illegality is brought to the notice of the court and if the person invoking the aid of the court is himself implicated in the illegality.
17. Indeed, this court has the inherent jurisdiction to set aside any proceedings on its own motion where the said proceedings are illegal, null and void. The Summary Judgment that was entered in this matter pursuant to the Ruling of 8th June, 2009 remains illegal, null and void.
18. For those reasons, I make the following orders:

(a) The Ruling of this court of 20th June 2014 and the subsequent orders be and are hereby set aside.

(b) The Ruling of this court of 8th June 2009 and the subsequent orders be and are hereby set aside.

(c) Each party to bear its/his own costs.

Dated and delivered in Malindi this 7th day of **November**, 2014.

O. A. Angote

Judge