



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: WAKI, MARAGA & M'INOTI, J.J.A)
CIVIL APPLICATION NO. NAI 55 OF 2012 (UR 39/2012)

BETWEEN

MICHAEL MUNGAIAPPLICANT

AND

KENYA COMMERCIAL BANK LIMITED.....1ST RESPONDENT

CHRISTOPHER AVISA.....2ND RESPONDENT

HOUSING FINANCE OF KENYA CO. LTD.....3RD RESPONDENT

KENYA BUILDING SOCIETY.....4TH RESPONDENT

MR. MUNGA'LA AND OTHERS.....5TH RESPONDENT

KENYA PLANTERS COPERATIVE UNION LTD.....6TH RESPONDENT

(Being an application stay of any further proceedings pending the hearing and determination of an intended appeal from the ruling and orders of the High Court of Kenya at Nairobi (Odunga, J) date 13th February, 2012

in

HCC NO. 779 OF 2009)

RULING OF THE COURT

- MICHAEL MUNGAI** (the applicant), is a lay person who is appearing in person in his application before us. His pleadings are difficult to understand. Doing the best we can in trying to decipher his application before us dated 16th February 2013, what we make of it is that from some previous court proceedings, he claims he has a decree of over Kshs.19 billion against Kenya Commercial Bank Ltd (KCB). In an effort to recover some money due to it from the Kenya

Planters Co-operative Union (KPCU), KCB placed KPCU under receivership. To stop what he terms the plunder of the assets of KPCU by the receivers, which form the base of the livelihood of the coffee farmers in Kenya, the applicant through his firm known as Inducom Business Services wrote to KCB on 5th January 2010 and directed it to take a sum of Kshs.1 billion from the decretal sum of Kshs.19 billion it owes him and off-set the KPCU's debt. He also wrote to KPCU that as a sign of good gesture for bailing it out, it should consider allocating to him shares equivalent to the said sum of Kshs. 1 billion he paid on its behalf to KCB.

2. On the basis of that bail out, the applicant applied to be joined as an Interested Party in HCCC No. 779 of 2009, a suit between KCB and KPCU in which KPCU was challenging KCB's appointment of receivers over its assets. After hearing the application, Kimondo J in effect found the applicant to be a busy body who presented no proof at all that KCB owed him any money leave alone the whopping Kshs.19 billion and dismissed it. As the applicant was unrepresented, and considering the number of parties in that application, he declined to award costs against him but directed that the applicant should not file any other pleadings in that suit without leave of the court.
3. Without seeking leave as directed by Kimondo J, on 5th January 2012 the applicant filed another application seeking basically the same orders as those in the earlier application that Kimondo J had dismissed. Odunga J dismissed it as being an abuse of the process of the court. The applicant has evinced his intention to appeal against that decision by filing a notice of appeal.
4. Pending the filing and determination of his appeal, the applicant has come to this court with a Notice of Motion dated 16th February 2012, brought under **Sections 3A and 3B** of the **Appellate Jurisdiction Act** and **Sections 1A and 1B** of the **Civil Procedure Act**, seeking a stay of any further proceedings in HCCC No. 779 of 2009 "*pending settlement of the previous court proceedings, rulings, directives, order, decree, bills, notices & warning etc issued in HCCCCA 335 of 1997, HCCC 17 of 2001, HCCC 1026 of 2001 and CA NAI 288 of 2008 (UR 190/2008) and/or the conclusion of the intended appeal.*" He also seeks the setting aside of Odunga J's order of 13th February 2013 dismissing his application dated 5th January 2012 and the grant of his said application dated 5th February 2012 as prayed.
5. When the application came up for hearing before us on 25th February 2014, Mr. Milly, learned counsel for KCB, the 1st respondent, raised a preliminary objection notice of which he had given. He argued that the applicant is not party to HCCC No. 779 of 2009 which is a suit filed by KPCU challenging the appointment of receivers by KCB. He cannot therefore seek to stay proceedings in a suit he is not party to as he has no *locus standi*. At any rate, he said, that suit has been settled and there are therefore no proceedings to stay.
6. Mr. Kihunyu, learned counsel for the 6th respondent, adopted the submissions by counsel for KCB and also urged us to strike out or dismiss this application as being frivolous and an abuse of the process of court.
7. In opposition to the preliminary objection, the applicant argued that having filed the application for stay of execution, the 1st and 6th respondents should not have settled the suit. And as he was not involved in the negotiations that led to settlement of the case, he urged us to overrule the preliminary objection.
8. We have considered these submissions and read the record. The applicant is not a party to HCCC No. 779 of 2009, the proceedings of which he seeks to stay. As a matter of fact the decision he seeks to appeal against dismissed his application to be enjoined in that suit. Further more the applicant has joined to his application people and entities which are not party to that suit.
9. In the circumstances, we agree with counsel for the 1st and 2nd respondents that the applicant is a busybody who has no *locus standi* in HCCC No. 779 of 2009. At any rate that suit having been

settled, there are no proceedings to stay. As this is not an appeal against Odunga J's decision, we cannot grant the applicant's application dated 5th January, 2012 seeking to be enjoined in HCCC No. 779 of 2009 even if the application had merit. Consequently we uphold the preliminary objection and hereby strike out the applicant's Notice of Motion dated 16th February, 2014 with costs to the 1st, 2nd and 6th respondents.

DATED and delivered this 4th day of April 2014.

P.N. WAKI

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JUDGE OF APPEAL

D.K. MARAGA

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JUDGE OF APPEAL

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy

of the original

DEPUTY REGISTRAR

