



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, O’KUBASU & ONYANGO OTIENO, J.J.A.)

CIVIL APPLICATION NO. NAI. 288 OF 2008 (UR. 190/2008)

BETWEEN

MICHAEL MUNGAIAPPLICANT

AND

KENYA COMMERCIAL BANK LIMITED.....1ST RESPONDENT
CHRISTOPHER AVISA.....2ND RESPONDENT
HOUSING FINANCE CO. (K) LIMITED.....3RD RESPONDENT
KENYA BUILDING SOCIETY LIMITED.....4TH RESPONDENT
MR. MUNG’LA.....5TH RESPONDENT

(Application for injunction pending filing, hearing and determination of appeal from a judgment of the High Court of Kenya at Nairobi (Okwengu, J.) dated 16th October, 2008 in

H.C.C.C. NO. 335 OF 1997)

RULING OF THE COURT

The applicant, **MICHAEL MUNGAI**, appears in person as he has always done in the previous matters before this Court. That being the case, the Court has granted him some latitude so that he could ventilate his grievances. But as it happens with an aggrieved litigant, he is ready and willing to vilify anybody who does not support his point of view. It therefore becomes very difficult to deal with such a litigant who insists on personally prosecuting his case. What does the applicant want? We can do no better than go to what was filed in Court. The application is entitled:-

“In the matter of reviews and correction of errors, omissions and mistakes in Court records, directives, notices, warnings, bills, etc so as to facilitate execution of competent High Court offers, decrees, rulings, directives, bills, notices, warnings etc. In the matter of intrusion and blocked execution of Court orders in HCCA 335 of 1997 and HCCC 17 of 2001.

Being an appeal to clear contempt of Court in process orders, decrees, rulings, notices, warnings, bills, etc so as to facilitate execution of Court orders, decrees, rulings, directives, notices, warnings, bills, etc from the High Court of Kenya at Nairobi (given by Hon. Justice Boghori, Hon. Justice Kubo, Hon. Justice Aluoch, Hon. Justice Mutungi, Hon. Justice Rawal, Hon. Justice Sitati, Hon. Justice Okwengu and other Hon. Judges of the High Court of Kenya) in HCCA 335 of 1997, HCCC 17 of 2001 and

HCCC 1026 of 2001.)

In the matter of intrusion and blocked execution of Court orders in HCCA 335 of 1997, HCCC 17 of 2001 and HCCC 1026 of 2001.

Brought under Rules 1(2), 3, 22, 31, 35 and 79 of the appellate Jurisdiction Act Cap 9 together with Sections 1(3)A 51 (Rule 10) Section 54 (Rule 2) of the Civil Procedure Act Cap 21, as read with the sections 22 and 23 of the Constitution of Kenya and other enabling powers of law and statute.”

The application is supposed to be an Ex parte Notice of Motion in which the applicant seeks relief in the following manner:-

“Let all the parties concerned attend before the Honourable Court on the day of _____, 2011 at 9 O’clock in the morning or soon thereafter as Michael Mwangi the above named appellant/applicant (decree holder), may be heard, will move the Hon. Court for the following orders inter alia: That pending the hearing and conclusion of these matters:-

1. This application be certified urgent for instant disposal.

2. That the Hon. Court declare that the 5 respondents (intruders/transferees lite pendent) and their lawyers & others, have no locus, status, capacity or right to appear or address the Court of Appeal or any other Court of law while they (five respondents and their agents) are ignoring and in contempt of acknowledged competent Court orders, rulings, directives, decrees, summons, warning, bills etc.

3. The Hon. Court order the Deputy Registrar to correct the Court records in line with the execution applications dated 5th August, 2008, 29th October, 2008 and 5th August, 2009.

4. That the five respondents and their agents be ordered to deposit, all the billed amounts (billed to them by the applicant) with either the Hon. Court or in an interest bearing account with an international bank in the joint names of the Court Registrar, the respondents lawyers and the appellant applicant (decree holder), pending the execution of the served Court orders, Court rulings, Court decrees, directives, bills etc.

5. That the Hon. Court grant the appellant applicant costs of these applications, certificates of stated costs for the applications and the other prayers to correct the deliberate errors, omissions, crimes, mistakes etc together with any other the Hon. Court deems fit to grant the appellant/applicant, bearing in mind that the five respondents and their agents are just being obstinate.”

That is the application that came up for hearing before us on 13th October, 2011. As already stated, the applicant appeared in person. None of the respondents appeared. The applicant informed us that all the respondents had been served with all the relevant documents. In his address which was rather long and at times quite confusing, the applicant said that he was asking for **prayers 2, 3, 4** and **5**. His complaint was that although he won in the High Court, he has never enjoyed the fruit of his judgment. He complained that instead of dealing with divorce matters, the 2nd and 3rd respondents gave false documents to his wife.

The genesis of this matter is a dispute between the applicant and his wife in the Subordinate court which dispute reached the High Court by way of an appeal in which the applicant was the successful party. The applicant (*as the Successful appellant*) had his bill of costs taxed at **Shs.311,290/=**. That being so, one would have expected the applicant to go away a happy man. But that was not to be. The applicant went to the High Court and filed a notice of motion expressed as brought “**under Order XXI, Order XXXIX and section 3A** of the Civil Procedure Act and **section 5** of the Judicature Act seeking inter alia:-

“1. Orders to stop Nancy Wanjeri (petitioner), Kenya Commercial Bank (1st Respondent), Christopher Avisia (2nd respondent), Housing Finance Co (K) Ltd. (3rd Respondent), Kenya Building Society Ltd. (4th respondent) and Mr. Mung’la (5th respondent), from malicious repeating (sic) in words and deed,

false and malicious allegation that the appellant borrowed money from housing finance Company Ltd.

- 2. That the 5 respondent's and their agents be ordered to vacate the appellant's property on LR. Nairobi Block 111/530. In default they be removed from the property by the OCPD/OCS Kayole Police Station.*
- 3. That the five respondents be ordered to pay the applicant the extra bills for the losses, charges and costs caused by the publishing in words and deeds false and malicious allegations.*
- 4. That warrants of attachment do issue against the respondent for the undisputed bills of Kshs.846,556,520/=.*
- 5. That the court should cite and penalize the five respondents by ordering their arrest and committal to civil jail for contempt of court.*
- 6. That the court do impose a fine of Kshs.100,000/= as punitive damages against the respondents."*

That application was placed before Okwengu, J. who having considered all that was urged before her dismissed it vide her ruling delivered on **16th October, 2008** in which she stated inter alia:-

"I have carefully considered the application before me. The applicant has raised substantive complaints. First, he appears to be complaining about being defamed by the respondents. Secondly, he appears to be complaining about substantial loss and damage arising from his alleged unlawful eviction from the suit property by the respondents. And thirdly, the alleged contempt of court orders by the respondents. I have also considered the court record with regard to this appeal. I note that the appeal was against orders made on 11th December, 1997 in a Divorce Cause No. [.....] in the SRM's Court, Nairobi, where-in it was ordered inter alia that the applicant (who was the respondent in the divorce cause) vacates the suit premises i.e. Komarock Sector 3A House No. 283 by 13th December, 1997; that in default he be evicted; and that the couple be no longer bound to cohabit with each other.

This appeal was heard and the judgment delivered in favour of the appellant on 13th July, 1998. Subsequently, the appellant's bill of costs was taxed and he was awarded a sum of Kshs.311,290/=. In my considered opinion, the proceedings relating to this appeal have been finalized and there is no room for the applicant to canvass the substantive issues which he is now raising. Moreover, the respondents were not parties to this appeal and cannot be brought in at this stage. Further, the issue relating to defamation and damages, forms a substantive cause of action which can only be canvassed in a separate suit. Finally, the applicant cannot purport to enforce orders made in a different suit i.e. HCCC No. 17 of 2001 "OS" in this particular appeal. For these reasons, I find that the application before me is misconceived and the same is accordingly dismissed."

It was after the foregoing that the applicant came to this Court by an earlier application which was dismissed by this Court's Ruling delivered on **17th May, 2009**. The current application was filed subsequent to this Court's ruling of **17th May, 2009**.

We carefully listened to the applicant as he addressed the Court and having perused the record in an effort to appreciate what the applicant wants, but we have come to a firm conclusion that while the applicant has the right to ventilate his lamentations in our courts, the application before us is clearly misconceived. It is unfortunate that the applicant is unrepresented and hence it is not easy for him to appreciate the difficulties he presents to the courts as he passionately pursues what he believes to be his rights.

In view of the foregoing, we have no alternative but to order that this application be and is hereby dismissed with no orders for costs.

Dated and delivered at NAIROBI this 18th day of November, 2011.

R.S.C. OMOLO

.....
JUDGE OF APPEAL

E.O. O’KUBASU

.....
JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR