



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI
CAUSE NO. 12 OF 2013

PAULINE WAIHERA MURAGURI.....1ST CLAIMANT

JULIA WANJIKU GATHURA.....2ND CLAIMANT

FAITH NDUTA KIHWAGA.....3RD CLAIMANT

VERSUS

MURANG'A FARMERS CO-OPERATIVE UNION

LIMITED (FORMERLY KNOWN AS MUGAMA

FARMERS CO-OPERATIVE UNION LIMITED).....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th July, 2017)

RULING

The application by a notice of motion was filed on 26.05.2017 for the respondent through Macaharia Gakaria & Associates. It is under Order 45 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Cap 21 laws of Kenya. The substantive prayer is that the ruling and order of the court made on 29.03.2017 be reviewed and varied. The application is based on the attached affidavit of Francis Ngone Gathiga and on the following grounds:

- a) On 29.03.2017 the court made an order directing the said Francis Ngone Gathiga to attend court to show-cause why he should not be committed to civil jail.
- b) The said Francis Ngone Gathiga is the chairman of the board and hence not competent to answer to the notice to show-cause as there are other officers of the applicant competent to do so.
- c) The notice to show-cause has been directed to the wrong party.
- d) The applicant is committed to liquidating the judgment sum by instalments.
- e) Thus the summons should be varied or set aside as against the said Francis Ngone Gathiga.
- f) The review should therefore be allowed because the said Francis Ngone Gathiga is apprehensive that he may be committed to civil jail on account of a misdirected notice to show cause.

The application is opposed by the replying affidavit of Faith Nduta Kihwaga filed on 05.06.2017 through

J.N.Mbuthia & Company Advocates. The grounds as urged to oppose the application are as follows:

- a) There are no established grounds for review.
- b) The said Francis Ngone Gathiga has all necessary authority to represent the applicant and to direct the applicant's officers as necessary.
- c) The said Francis Ngone Gathiga has full information and is the right person to comply as ordered by the court.

The court has considered the parties' respective submissions and returns that the application must fail due to the following reasons:

- a) As submitted for the claimants, on 12.05.2017 and long after the orders of 29.03.2017 now sought to be reviewed, by consent of the parties it was ordered that the said Francis Ngone Gathiga appears to show cause on 23.06.2017. The orders sought to be reviewed are clearly superseded by the consent orders of 12.05.2017 and the court will not act contrary to the parties' own consent.
- b) The applicant has not established an error or a mistake on record or, fresh evidence initially not available, or indeed any other ground known in law that would justify the review of the orders as prayed for.
- c) The said Francis Ngone Gathiga is no doubt the chairperson of the respondent, a corporate body. Order 22 rule 35(b) is clear that where a decree is for the payment of money, the decree-holder may apply to the court for an order that an officer of a corporation be orally examined as to whether the judgment-debtor has any and what property or means of satisfying the decree, and the court may make an order for attendance and examination of such judgment-debtor or officer, or other person, and for production of any books or documents. The orders sought to be reviewed were clearly under that provision and the applicant's lamentation that the corporate veil is being unfairly lifted is obviously an empty expression of grief and the proper action is for the chairperson, the said Francis Ngone Gathiga to comply as by rules required to do. For avoidance of doubt, the court returns that he is the best officer to attend as was ordered by the court.
- d) Thus the court returns that the application will fail as is liable to dismissal.

In conclusion, the application dated 26.05.2017 and filed on the same date is hereby dismissed with costs and for avoidance of doubt, with orders for:

- a) The said Francis Ngone Gathiga being the applicant's or judgment-debtor's chairperson shall attend court for oral examination per order 22 rule 35 of the Civil Procedure Rules, on a date convenient to parties, and to bring records, books, statements of accounts for the applicant in all banks since 2013 where the applicant holds such accounts and including specifically in Co-operative Bank of Kenya, Murang'a Branch where Kshs 53 Million was deposited by the government as part of waiver of coffee debts, and to also produce records on rent in respect of the applicant's various premises; and
- b) For the purpose of order (a) above a notice to show-cause already issued or to be issued per order 22 rule 31 of the Civil Procedure Rules shall apply to the said Francis Ngone Gathiga accordingly and failing his attendance on the due date, a warrant of arrest to secure his attendance shall issue forthwith.

Signed, dated and delivered in court at Nyeri this **Friday, 14th July, 2017.**

BYRAM ONGAYA

JUDGE