



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 133(N) OF 2008

1. ALPHONSE MWANGEMI MUNGA
2. PETER MUCHIRI MURIUNGI
3. MICHAEL ONYANGO OCHIENG'
4. PETER N. MAKAU
5. CHIVATSI KATAMA
6. MARICOS NYAMWANGA OKONGO
7. STEPHEN NZIOKA KASINA
8. SHADRACK C. LEWA
9. BENEDICT ORWARU
10. NICHOLUS MUOKI

**11. JAMES KANGELE (Suing on their own behalf and on behalf of
367 employees of AFRICAN SAFARI CLUB LIMITED.....CLAIMANTS**

VERSUS

AFRICAN SAFARI CLUB LIMITED.....RESPONDENTS

RULING

1. Application dated 30th January 2014 was filed on a certificate of urgency seeking for orders interalia:
2. That the Court be pleased to order a review of the order made on 11th December 2013 and / or setting aside of the same pending the hearing and determination of this application and the main suit.

3. The application is supported by an Affidavit of one Sheila Nkatha Muthee, an Advocate of the High Court of Kenya practicing at Mombasa under the name and style of Messrs Muthee Oballa and Associates Advocates for the Administrator of the estate of the late Karl Jacobs Ruedin who died intestate in the Republic of Kenya on 19th day of March 2013, in Shanzu area within Mombasa County leaving behind his two sons Roland Ruedin and Hans Peter Ruedin as his survivors and / or beneficiaries.

4. That at the time of his death, the deceased resided on plot number MN/1/1515 CR No. 13371 in Shanzu area within Mombasa County.

5. That the beneficiaries had trusted the remaining directors, consultants and /or counsels of the deceased to act in the best interest of the deceased's estate and beneficiaries however, that trust has now been abused to the detriment of the estate of the deceased in that on or about the 11th day of December 2013, the Industrial Case No. 133(N) of 2008 came up for a mention before me.

6. That counsel for Claimants and the counsel of the named director therein, in the absence of the parties and more particularly counsel and / or a legal representative / Administrator of the deceased, proceeded to record a consent that stands to greatly jeopardize the rights of the beneficiaries of the deceased's estate.

7. That pursuant to the said consent the Court proceeded to issue a prohibitory order for sale by way of public auction of plot No. MN/1/1515 CR. No. 13371.

8. That the Court proceeded to further authorize / be Registrar to issue a notification of sale and execute all necessary documents to facilitate the sale.

9. The Applicant prays this Court to review the consent order.

The Applicant has attached to the application an order of **Maureen Odero J. in Succession Cause No. 305 of 2013**, at High Court Mombasa wherein the present Applicant was awarded a grant of letters *ad colligenda bona* limited only to enable her take legal steps to preserve the Shanzu plot No. MN/1/1515 CR. No. 13371 on 24th January 2014.

10. On 30th December 2013, the High Court granted a preservatory order to protect and preserve the estate of the deceased from the sale by public auction of the deceased's plot number MN/1/515 CR No.13371 pending interparties hearing on 20th January 2014 by Maureen Odero J.

11. The above took place either oblivious or in disregard of the orders of this Court made on 11th December 2013 following tracing of properties of African Safari Club, a company whose principal share holder and Managing Director is the late Karl Jacobs Ruedin.

12. The late proprietor died without satisfying an award of this Court delivered on 28th April 2011 in respect of terminal benefits due and owing to 368 former employees in the sum of Kshs.137,400,025.00.

13. The examination of the surviving Directors of the Respondent company led to the tracing of the property the subject of this suit leading to the consent order dated 15th December 2013.

14. The Application is opposed and the Respondent filed grounds of objection on 11th February 2014 and a Replying Affidavit on 18th February 2014.

15. The nub of the objection is as follows;

- i. The Applicant Sheila Nkatha Muthee does not have any *locus standi* before this Court as a purported administrator *ad colligenda bona* and neither can the said Sheila Nkatha Muthee act as an Advocate and Administrator of the estate at the same time as this contravenes the **Advocates**

Act and hence the firm of Muthee Oballa and Associates cannot act on behalf of the estate of the late Karl Jacob Reudin a Director of the Respondent.

- ii. This Court does not wish to get into the merits and demerits of the grant of letters of administration *ad colligenda bona* by Hon. Maureen Odera J. as this matter falls within the jurisdiction of the High Court and not the Industrial Court.
- iii. The Court needs only determine whether there are sufficient grounds to review the consent order recorded on 11th December 2013 with a view to partly settle the long standing judgment debt against the Respondent in favour of its 368 employees.

16. It is trite that the Industrial Court as constituted pursuant to **Article 162(2)(a)** of the Kenya Constitution 2010 as read with **Section 4(1)** of the **Industrial Court Act 2011** has an equal status to the High Court and one Court cannot be a forum of staying orders of another Court of concurrent jurisdiction in a different cause of action.

17. This Court is convinced that there was material non-disclosure of the status of the matter pending before the Industrial Court to the High Court in order to obtain the orders granted by the High Court aforesaid.

18. This has the effect of making the Court of concurrent jurisdiction act at cross purposes with respect of the same subject matter.

It is clear that the whole purpose of obtaining the grant *ad colligenda bona* is to avoid debts owed to hundreds of employees of the Respondent in this suit and to protect unjustly, the assets of the deceased in order to frustrate orders of this Court. It is in this spirit that letters of Administration have not been sought yet the deceased died more than a year ago.

19. In the case of **Kahawa Sukari Limited (2004) [EA 93]** the Court held;

“a grant of letters of Administration intestate is not sufficient to constitute the Petitioner a member of the company under Section 211 of the Companies Act. A person who obtains grant *ad colligenda bona* is not a representative of the deceased until he obtains a full grant. Even a person with full grant cannot be treated as a member of a company until he is entered in the register of members.”

20. In this regard, the Applicant herein cannot move the Court to set aside orders made by this Court against the respondent company and therefore Sheila Nkatha Muthee lacks *Locus standi* in these proceedings and this application for this reason and others cited earlier, especially the conflict of interest by the Applicant in purporting to Act both as an administrator of the estate and at the same time as the Advocate of the same (see **Rule 9 Advocates Practice Rules**) is dismissed with costs.

Dated and Delivered at Nairobi this 11th day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE