



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. NO. 309 OF 2013

GOLD BRIDGE LIMITED.....PLAINTIFF/APPLICANT

VERSUS

JOHN NJUGUNA

T/A ROCK CITY GARDENS..... DEFENDANT/RESPONDENT

RULING

The suit first came into my hands on 21/3/13 when a Certificate of Urgency and Notice of Motion dated 20/3/13 was brought before me for consideration. I noted that the Notice of Motion did not disclose urgency and directed the Plaintiff/Applicant to obtain an *Interpartes* hearing date at the Registry and to serve the Respondent.

The file was thereafter handled by other Judicial Officers.

The file then returned to me on 30th May 2013, when the Notice of Motion dated 20/3/13 was slated for hearing. The Defendant/Respondent submitted that he was not ready to proceed as he wished to put in his response to the application first.

This was strongly objected to by Counsel for the Plaintiff. I allowed the Defendant/Respondent 14 days within which to file his response and noted that no further adjournments would be allowed. I also awarded the Plaintiff/Applicant the day's costs and gave the parties a hearing date of 13/6/13.

On 13/6/13, it is the Plaintiff/Applicant who applied for an adjournment to put in a further affidavit and to file written submissions. The Defendant/Respondent agreed to this. I therefore proceeded to allow the Plaintiff/Applicant leave to file their further affidavit and written submissions within 7 days. I also allowed the Defendant/Respondent 7 days to file their written submissions. I also gave them a hearing date of 9/7/13.

This notwithstanding, on 9/7/13, none of the parties had filed written submissions. Specifically none other than the Plaintiff/Applicant applied for more time to file their written submissions. The Plaintiff/Applicant requested for 7 days and the Defendant/Respondent requested for 7 days. They

asked for a mention on 26/7/13 for compliance. I allowed the parties more time as requested but gave them a mention date of 24/7/13 which was in accordance with the available dates in our court diary.

On 24/7/13, the Plaintiff's Counsel sent Mr. Mboya to hold his brief. Mr. Mboya confirmed that the Plaintiff/Applicant had filed his written submissions. However, Counsel for the Defendant/Respondent stated that he had not been served by the Plaintiff/Applicant with their written submissions and as a result had not been able to file his written submissions. It is noteworthy that Mr. Mboya did not object to the application for adjournment. I therefore directed the Plaintiff/Applicant to serve the Defendant with his written submissions and allowed the Defendant/Respondent 7 days within which to file their written submissions. I also allowed the Plaintiff/Applicant leave to file a further affidavit if need be and gave them a mention date of 26/9/13 which date was the earliest available according to our court diary.

Come 26/9/13, Counsel for the Plaintiff/Applicant complained that he had not been served by the Defendant/Respondent with their written submissions. However, the Defendant/Respondent confirmed that he had filed his written on the same date and would serve Counsel for the Plaintiff. I admitted the Defendant/Respondent's written submissions and fixed the date for highlighting of submissions on 31/10/13 which was in accordance with the available dates on our court diary.

Come 31/10/13, Counsel for the Plaintiff/Applicant informed the court that he had petitioned the Chief Justice in respect of this matter and had no instructions to proceed until directions are given. Counsel for the Defendant/Respondent responded that he was not aware of such petition but agreed that the Chief Justice's directions be awaited. I gave a mention date of 3/12/13 which is today.

Today, 3/12/13, the Plaintiff's Counsel has handed me a document ostensibly from the Judiciary Service Desk, requested me to take judicial notice of the remarks contained therein and requested me to recuse myself from handling this matter. Counsel for the Defendant/Respondent was having his brief held by Mr. Wati who submitted that Mr. Maina wished to make his submissions on this issue personally. I informed the parties that I required some time to peruse the court record to ascertain what the complaint was all about and also to further study the document submitted to me. I have done this and can now address the issue authoritatively. My observation is that with the exception of the first adjournment granted to the Defendant/Respondent on 30/5/13 which I specifically stated was the last adjournment I would grant him, all the other adjournments in this matter were either requested for by the Plaintiff/Applicant or were consented to by him. Under no other circumstances did I grant another adjournment to the Defendant/Respondent.

Secondly, I was never contacted by anyone within the judiciary on the Plaintiff/Applicant's complaints against me to the effect that I was delaying this suit and favouring the Defendant/Respondent. I have only come to be aware of this complaint this morning from the piece of paper that the Plaintiff/Applicant has handed to me. The authenticity of this piece of paper is to me questionable because it was not sent to me through our internal mechanisms in the Judiciary. No one within the Judiciary has mentioned about this complaint to me. Further, the said piece of paper states that the ticket was closed and that the Plaintiff/Applicant could contact the Judiciary Ombudsman's Office if not happy with the resolution of the issue.

Thirdly, the Plaintiff/Applicant did not in any way inform the Defendant/Respondent of the nature of their complaint to the Chief Justice or the outcome thereof. The Defendant/Respondent has been kept in the dark on this issue.

My conclusion is as follows:

That there is no evidence on the court record that the Plaintiff/Applicant's complaint bears any merit. The same is unfounded and untrue. In my view, after considering the totality of this suit and the complaint, I am of the view that the Plaintiff/Applicant is engaging in forum-shopping. To my mind, a judge should not recuse himself from handling a suit on mere flimsy allegations on the part of a party to a suit in a case such as this one. There must be a good reason for recusing oneself from hearing a suit. In this case, I see no good or particular reason why I should recuse myself. I therefore, decline to recuse myself and confirm that I will proceed to hear this case to its reasonable conclusion unless otherwise directed by the appropriate authorities. It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2013

MARY M. GITUMBI

JUDGE



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