



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ &P, Mwilu; DCJ &VP, Wanjala, Lenaola & Ouko SCJJ)

APPLICATION NO. E013 OF 2023

-BETWEEN-

LAWRENCE BOSIRE MIRUKAAPPLICANT

VERSUS

KENYA REVENUE AUTHORITY 1ST RESPONDENT

SAMUEL KAMAU2ND RESPONDENT

GORDAS AGENCIES..... 3RD RESPONDENT

RICHARD MAITAI GORDAS..... 4TH RESPONDENT

ATTORNEY GENERAL.....5TH RESPONDENT

STATE AGENCIES REGISTRATION BOARD6TH RESPONDENT

Representation:

Lawrence Bosire Miruka
(In person)

Shijenje Johnson, Advocate
(Kenya Revenue Authority, the 1st Respondent)

The 2nd, 3rd, 4th, 5th and 6th respondents did not respond to or participate in the application)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 17th March, 2023 and filed on 3rd April, 2023 which the applicant has titled ‘*seeking leave under Rules 7 and 33 (3)*’ and pursuant to Articles 1, 2, 3, 10, 14, 19, 22, 23, 26, 27, 28, 34, 35, 43, 47, 48, 50(1), 59, 73, 75, 79, 94, 96, 100, 156(6), 157, 159, 163, 164, 172, 173,

209, 210, 228, 229, 247, 252, 258 and 259(1) and 260 of the Constitution, Rules 7 & 33 (3) of the Supreme Court Rules, Sections 18,19 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, in which the applicant seeks among other reliefs: an order of prohibition barring the 1st, 2nd, 3rd and 5th respondents from proceeding to file any responses, defence, affidavits and submissions in the lower courts; default judgment be entered in Civil Appeal No.E005 of 2020; and that he be granted a whistleblower award, protection, compensation and costs of the application;

[2] UPON perusing the grounds on the face of the application, the applicant's supporting affidavit, and submissions dated 24th March, 2023 in which he contends that: he has enlightened the 1st respondent and given his ideas, information and intelligence for which he has not been rewarded; he has information to map out and register all landlords, estate property owners, estate agents and curb tax evaders; he filed Petition 538 of 2016 at the High Court and Civil Appeal No.E005 of 2020 at the Court of Appeal which matters were uncontested; the High Court declined to enter judgment in default and dismissed his petition; there has been a delay in expediting (*sic*) the matter; he has faced threats and intimidation; and that the orders sought will advance the cause of justice;

[3] UPON considering the replying affidavit by Mohamed M'Maka, of the 1st Respondent's Intelligence & Strategic Operations/Investigations & Enforcement Department, sworn on 3rd May, 2023 in response to the application on behalf of the 1st respondent where he states that: this Court lacks jurisdiction to entertain the matter and grant the orders sought as it is not a matter envisaged under the Supreme Court Act for which this Court has original jurisdiction; there is no appeal before this Court from the Court of Appeal; the matter does not raise any substantive issues for constitutional interpretation; the subject matter is still live and pending before the Court of Appeal in Nairobi Civil Appeal No.E005 of 2020 and that the applicant has filed a similar matter at the High Court being Misc. E004 of 2023 between the same parties; and

[4] UPON considering the 1st respondent's further contention that no recovery of taxes was made from the subject matter in Nairobi High Court Petition No. 538 of 2016 to warrant application of Section 5A of the Kenya Revenue Authority Act which provides for a reward to any person for information leading to the identification or recovery of unassessed taxes or duties; it is not aware of any criminal proceedings arising from the subject matter to warrant witness protection, and further, that witness protection is beyond its statutory mandate; and that the application is unmerited and is for dismissal with costs to the 1st respondent as the applicant is a vexatious litigant; and

[5] NOTING that the 2nd, 3rd, 4th, 5th and 6th respondents neither filed any responses to the application nor participated in the matter before this Court;

[6] BEARING IN MIND this Court's jurisdiction under Article 163(4)(a) and (b) of the Constitution, as read together with Section 15, 15A and 15B of the Supreme Court Act, to hear appeals from the Court of Appeal on matters relating to the interpretation and application of the Constitution and those involving matters of general public importance upon certification;

[7] WE HAVE CONSIDERED the application, affidavits, submissions filed and **NOW OPINE** as follows:

- (i) This application has not been filed pursuant to the provisions of Article 163(4)(a) or (b) of the Constitution, as read together with Section 15, 15A and 15B of the Supreme Court Act which grants this Court jurisdiction to hear appeals from the Court of Appeal on matters relating to the interpretation and application of the Constitution and those involving matters certified as involving general public importance. The application is also not seeking certification or review under Article 163(4)(b) of the Constitution.
- (ii) In any event, in *Sum Model Industries Ltd v Industrial and Commercial Development Corporation*, Sup. Ct. Civil Application No. 1 of 2011 [2011] eKLR we held that a certification for leave to appeal to the Supreme Court on a matter of general public importance ought to be first filed at the Court of Appeal and a party

dissatisfied with the Court of Appeal's decision in this regard, is at liberty to seek a review of that decision from the Supreme Court. This is the import of Rule 33 that the applicant has invoked.

- (iii) There is neither an appeal nor an intended appeal preferred to this Court from the Court of Appeal. The applicant has not made reference to any decision by the Court of Appeal in the present case. The genesis of the matter is High Court ***Petition No. 538 of 2016*** filed by the applicant. The same was dismissed and the applicant appealed to the Court of Appeal in ***Nairobi Civil Appeal No. E005 of 2020***, which appeal is yet to be heard and determined on its merits.
- (iv) The applicant has instead invoked the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, and has sought orders that are not in the nature envisaged under the Constitution or the Supreme Court Act for which this Court has original jurisdiction.
- (v) Rules 7 and 33 of the Supreme Court Rules quoted by the applicant are not reflected in the prayers sought by the applicant or the grounds in support of the application. Rule 7 relates to the sittings of this Court while Rule 33 relates to certification of a matter as involving general public importance, which, as already stated, the applicant has not complied with.
- (vi) As we held in ***Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscione*** Sup Ct. Application No. 4 of 2013 [2013] eKLR, it is trite law that a Court of law has to be moved under the correct provisions of the law, which the applicant has failed to do.

[8] CONSEQUENTLY, for reasons aforesaid, we make the following orders:

- (i) *The Notice of Motion dated 17th March, 2023 be and is hereby dismissed;*
- (ii) *Each party to bear own costs.*

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this **23rd** day of June, **2023**.

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M.K. KOOME
CHIEF JUSTICE &
PRESIDENT OF THE SUPREME COURT

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE
PRESIDENT OF THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA

