



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00753-CV

Kenneth **GIBUSSA**,
Appellant

v.

Sylvia **NYAUCHO**, Benta Okweso Cornel, and Lamech Hamisi,
Appellees

From the 225th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CI05422
Honorable Norma Gonzales, Judge Presiding

PER CURIAM

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: March 6, 2019

DISMISSED FOR LACK OF JURISDICTION

On October 16, 2018, appellant Kenneth Gibussa filed a notice of appeal seeking to appeal a judgment or order signed on July 24, 2018. The clerk's record was filed in this appeal on December 17, 2018.

The clerk's record revealed the following. On December 21, 2017, Gibussa filed his first amended petition naming three defendants: Sylvia Nyauch, Benta Okweso Cornel, and Lamech Hamisi. All three defendants filed answers. On June 29, 2018, two of the named defendants — Sylvia Nyauch and Benta Okweso Cornel — filed a no evidence motion for summary judgment.

On July 24, 2018, the trial court signed an order granting the motion which is the order Gibussa seeks to appeal.

After reviewing the clerk's record, this court determined the summary judgment order Gibussa seeks to appeal appeared to be interlocutory because it does not dispose of the claims against Lamech Hamisi, and no severance order appears in the record. A summary judgment that does not dispose of all parties and causes of action is not final and appealable. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93 (Tex. 2001). Accordingly, we ordered Gibussa to show cause in writing why this appeal should not be dismissed for lack of jurisdiction.

Gibussa filed a written response to this court's show cause order, stating he tried to take actions to proceed with his claims against Lamech Hamisi, but the trial court clerk and the "defendant attorney" insisted the underlying cause was "dismissed" and "closed." "If the appellate court is uncertain about the intent of [a summary judgment] order, it can abate the appeal to permit clarification by the trial court." *Id.* at 206. Because the order signed by the trial court appeared to be interlocutory, but the trial court clerk appeared to be providing advice to the contrary, we abated this appeal to the trial court for further clarification. We ordered the trial court to provide written clarification regarding the status of Gibussa's claims against Lamech Hamisi.

By letter dated February 26, 2019, the trial court responded to our order, stating the order Gibussa seeks to appeal "did not dispose of Plaintiff's claims against Defendant Lamech Hamisi, nor were the claims against Mr. Hamisi severed." Accordingly, the order Gibussa seeks to appeal is not a final, appealable order. Therefore, this appeal is dismissed for lack of jurisdiction without prejudice to Gibussa filing an appeal after a final judgment is entered.

PER CURIAM