



REPUBLIC OF KENYA



KENYA LAW
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**I & M Bank Limited v Pattni & 3 others (Civil Case E008 of 2022)
[2022] KEHC 13282 (KLR) (Commercial and Tax) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E008 OF 2022
DAS MAJANJA, J
SEPTEMBER 28, 2022**

BETWEEN

I & M BANK LIMITED PLAINTIFF

AND

JITENDRA PAT'TNI 1ST DEFENDANT

KOKILA PAT'TNI 2ND DEFENDANT

UMESH KALYAN PATEL 3RD DEFENDANT

MANJU LALJI PATEL 4TH DEFENDANT

RULING

1. The application for consideration before the Court is the Plaintiff's Notice of Motion dated 11th January 2022 seeking the following orders:
 1. Spent
 2. An order be issued against the 1st and 2nd Defendants for the delivery up of all jewelry taken out of Locker No. 160 [Large] on 7th July 2021 for joint verification and itemization by all the Defendants, the Plaintiff's authorized officers and all advocates of the parties to the suit within 3 days of the order of the court and the items be stored either with the Plaintiff or deposited in Court after verification.
 3. An injunction be issued restraining the 1st and 2nd Defendants, their servants, agents or employees from selling or transferring the jewelry collected from Locker 160 [Large] on 7th July 2021 and to preserve the entire jewelry on such terms as the court may direct and not dispose or otherwise part with possession of the jewelry pending the determination of the suit.



4. An order be issued directing all the Defendants to produce under oath, details of the jewelry that was in Locker No. 160 [Large] and produce copies of invoices and receipts relating to the purchase of the jewelry and all insurance policies, if any, regarding the insured jewelry detailing the value of each item in accordance with the details set out in the Safe Deposit Box Content Verification Forms executed on 8th June 2021 and 7th July 2021 within 7 days of the order of the court.
5. Costs of this application be the Plaintiff's in any event.
2. The application is supported by the affidavit and further affidavit of Nelly Kipsang, the Plaintiff's Operations Manager, Parklands Branch, sworn on 11th January 2022 and 16th June 2022 respectively. The application is opposed by the 1st and 2nd Defendants through the 1st Defendant's replying affidavit sworn on 11th February 2022. The 3rd and 4th Defendants rely on the replying affidavit sworn by the 3rd Defendant on 14th March 2022.
3. A brief background of the matter will suffice before I deal with the substance of the Plaintiff's application. The basic facts of the case are not in dispute. The 1st and 2nd Defendants and the 3rd and 4th Defendants executed Locker License Agreement dated 15th October 2015 and 23rd November 2018 respectively where the Defendants, as licensees, were required to pay a deposit in consideration for use of the locker. The 1st and 2nd Defendants were allocated Locker Number 160 [Large] ("the Locker") which they used actively until 3rd November 2018. After the 1st and 2nd Defendants relinquished it, the Plaintiff allocated the same Locker to the 3rd and 4th Defendants on 23rd November 2018.
4. In due course, the Plaintiff invited the 1st Defendant to verify the contents of the Locker but since the 1st and 2nd Defendants did not have the keys as they had relinquished it, the Plaintiff, at the request of 1st Defendant, broke the Locker on 7th July 2021. In October 2021, the 3rd and 4th Defendants demanded to have access to the Locker which the 1st and 2nd Defendants now claimed ownership together with the contents. They also demanded to be given the jewelry and items in the Locker which they claimed belonged to them. In essence, the Bank seeks several reliefs and in particular a declaration relating to the true owner of the contents of the Locker.
5. When the matter came up for directions on 27th January 2022, the court granted orders restraining the 1st and 2nd Defendants from selling or transferring the jewelry collected from the Locker on 7th July 2021 and to preserve the same pending the hearing and determination of the suit. On 17th February 2022, I directed the 1st and 2nd Defendants to show cause why Prayer No. 3 should not be granted and also pursue amicable settlement. Since the parties have not agreed on settlement, the court is called upon to determine Prayers No. 2 which is in the nature of a mandatory injunction and Prayer No. 4, which is the nature of discovery. The Plaintiff and the Defendants have filed written submissions in support of their respective positions. The 3rd and 4th Defendants support the Plaintiff's application.
6. As regards the mandatory order to deliver the jewelry to the court, the Plaintiff is supported by the 3rd and 4th Defendants who contend that there is clear evidence that the 1st and 2nd Defendants wrongfully, unlawfully and without the authority converted the contents of the Locker for their own use causing loss and damage to them.
7. The Plaintiff submits that it has satisfied the conditions for grant of a mandatory injunction as it has shown that the 1st and 2nd Defendants are trying to steal a match against the Plaintiff and the other Defendants by converting the jewelry obtained from the Locker. It contends that the 3rd and 4th Defendants are apprehensive that the 1st and 2nd Defendants may have already converted and sold



some of the said jewelry hence it is in the interests of justice that the orders sought in the application be granted.

8. The 1st and 2nd Defendants oppose the prayer for a mandatory injunction. They refer to a meeting held by the parties and their advocates on 22nd June 2022 at the 1st and 2nd Defendants' advocates' offices where the 3rd and 4th Defendants clearly intimated that the said jewelry collected by the 1st Defendant and shown to all the parties did not belong to them. They therefore state that the joint verification sought in order No. 2 has already taken place and an order cannot issue but that they are ready to produce the items if another verification is ordered.
9. The 1st and 2nd Defendants intimate to the court that they have understood and will abide by the injunctive orders issued on 27th January 2022 pending the hearing and determination of the matter and because of the sentimental value they attach to the jewelry, they prefer to keep custody of the items hence the court should not order them to deliver up what does not belong to the Plaintiff or to the 3rd and 4th Defendants who have clearly indicated the same does not belong to them in any event.
10. I have considered the material before the court and having issued an injunction at the initial stage, I do not think it is necessary to issue a mandatory order for several reasons. First, there is no indication that the 1st and 2nd Defendants intend to dispose of the items in its custody to the detriment of the parties. Second, the parties have done a verification exercise hence the parties are aware of the items in the 1st and 2nd Defendants' possession. Third, the 1st and 2nd Defendants have undertaken to provide the items to the order of the court. I therefore decline to issue the mandatory injunction.
11. As regards prayer No. 4, the same is in the nature of an order for discovery. All the parties are required in due course to provide to each other full discovery of all the documents in their power and possession relating to the suit. As this stage I propose to make a general order for discovery.
12. For the reasons I have set out above, I allow the application dated 11th January 2022 to the extent that I order as follows:
 - a. An injunction be and is hereby issued restraining the 1st and 2nd Defendants, their servants, agents or employees from selling, transferring or otherwise dealing the jewelry collected from Locker 160 [Large] on 7th July 2021 and to preserve the entire jewelry pending the hearing and determination of the suit or until further orders of the court.
 - b. The 1st and 2nd Defendant shall make the all jewelry collected from Locker 160 [Large] on 7th July 2021 available to the court as the court may direct pending the determination of the suit.
 - c. An order be issued directing the Plaintiff and the Defendants to produce under oath all the documents in their power and possession relating to this suit within 21 days from the date hereof.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2022.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Wawire instructed by Wamae and Allen Advocates for the Plaintiff.

Mr Koech instructed by Harit Sheth Advocates for the 1st and 2nd Defendants.

Ms Ng'ang'a instructed by MMA Advocates for the 2nd and 3rd Defendants.

