



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**COMMERCIAL CASE NO. E002 OF 2020**

**JENIFFER WANJIRU MUNGAI.....PLAINTIFF/APPLICANT**

**VS.**

**1. FAMILY BANK LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**2. JOSEPH M. GIKONYO T/A GARAM**

**INVESTMENTS AUCTIONEERS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. In the instant case **JENIFFER WANJIRU MUNGAI**, the plaintiff, seeks permanent injunction to stop **FAMILY BANK LIMITED**, the defendant, from selling the charged property, that is, LR NO. THIKA/MUNICIPALITY BLOCK 30/1009 which belongs to the plaintiff. The plaintiff also seeks a declaration that the 45 days auctioneer's notice to sell the charged property is nullity. The plaintiff also prays that the charged property be valued by independent valuer and accounts be taken and on being taken the plaintiff allowed to repay the defendant Kshs.90,000 per month.

2. The plaintiff filed an application dated 12<sup>th</sup> November, 2020 for interlocutory injunction.

3. The plaintiff admits she was granted a loan by the defendant on or about 16<sup>th</sup> October, 2016. That loan was secured by a legal charge over the charged property. The plaintiff alleged she made payment towards that loan but she experienced health and financial difficulties which affected her repayment.

4. Although the plaintiff alleged that the defendant had failed to serve on her the requisite statutory notices that allegation was refuted and was disproved through the replying affidavit of Sylvia Wambani, the defendant's legal officer. In that affidavit, the statutory notices served on the plaintiff were attached. The valuation of the charged property was also attached to that affidavit and further a letter dated 4<sup>th</sup> April, 2018 by the plaintiff whereby she admitted her indebtedness, was attached. The defendant has aptly demonstrated indebtedness of the plaintiff.

5. With the material placed before court has the plaintiff met the principles of granting an injunction? The principles of granting an injunction were set out in the case **GEILLA VS. CASSMAN BROWN & COMPANY LIITED [1973] EA 358** thus:-

***"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."***

6. As stated above the plaintiff does not dispute her indebtedness to the defendant. She only alleges some payments have not been reflected in her statement. It is trite that an injunction will not be granted when there is a dispute on the amount owed. This is what was stated in the case **MRAO LIMITED VS. FIRST AMERICA BANK OF KENYA LTD & OTHERS (2003) KLR 125** thus:-

***"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."***

7. The plaintiff is required to prove all the principles of granting an injunction sequentially. That was the holding of the Court of Appeal in the case **NGURUMA LIITED VS. JANBONDE NEILSEN & 2 OTHES (2014) eKLR** as follows:-

**“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;**

- (a) Establish his case only at a prima facie level,**
- (b) Demonstrate irreparable injury if a temporary injunction is not granted, and**
- (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.**

***These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”***

8. The plaintiff having admitted her indebtedness to the defendant and because the requisite statutory notices were served upon the plaintiff and the valuation of the property carried out the plaintiff fails to prove that that she has prima facie case with a probability of success.

9. In addition I find that the plaintiff was not candid because in her affidavit dated 12<sup>th</sup> November, 2020 she stated that although she was married, the defendant failed to get her spouse’s consent to the charge. The defendant in its replying affidavit attached an affidavit by the plaintiff, dated 19<sup>th</sup> October, 2015, where the plaintiff confirmed she was not married.

10. On the whole, there is no merit in the application and accordingly the Notice of Motion dated 12<sup>th</sup> November, 2020 is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 27TH DAY OF MAY, 2021.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : ..... Ndege

Plaintiff/applicant: ..... Ms. Ndirangu

Respondents: ..... Mr. Wainaina

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**