



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 55 OF 2020

LAWRENCE WANDURU NJOROGE.....APPELLANT/APPLICANT

VERSUS

MOMENTUM CREDIT LIMITED.....RESPONDENT

RULING

1. **LAWRENCE WANDURU NJOROGE**, the appellant, seeks injunction pending appeal by the Notice of Motion application dated 11th May, 2020.
2. Before Chief Magistrate's court Thika the appellant sued **MOMENTUM CREDIT LIMITED**, the respondent, seeking permanent injunction to restrain the respondent from selling, disposing off or interfering with vehicle registration number **KCD 805S**. The appellant sought before the Thika Court interlocutory injunction which was dismissed by that court on 7th May, 2020. This appeal was filed against that dismissal. The appellant now seeks injunction pending the hearing and determination of this appeal
3. Appellant, both before the Thika court and this Court, contends that he is the registered owner of the vehicle registration No. KCD 805S. That on or about 18th October, 2019 he received an email, which indicated he had received Kshs.402,000/= from the respondent. The appellant further deponed in his affidavit:-

“THAT I was initially shocked as I had neither sought any loan facility from the respondent nor signed any document applying or agreeing to any credit facility.

THAT as per the terms of the confirmation letter, the loan was to be secured by way of joint registration and chattel mortgage over my motor vehicle registration No. KCD 805S.

THAT sometime thereafter it came to my knowledge that the respondent herein had caused the joint registration of ownership over my motor vehicle and had proceeded to pick original logbook detailing the same from the offices of the National Transport Safety Authority.

THAT on 13/12/2019, the respondent herein sent me an email indicating that the initial instalment of Kshs.59,951/= was now due and that they would begin the process of repossessing my motor vehicle. A copy of the email is annexed hereto and marked as A“3”.

THAT being aggrieved with the above conduct, I filed Civil Suit No. 837 of 2019 in Thika Chief Magistrate's Court under certificate of urgency but the lower court declined to issue interim orders.”

4. The respondent is opposed to the injunction application. Their case is that the appellant applied for a loan whose security was the motor vehicle. They annexed the loan application, the valuation report of that vehicle, evidence of fitting of car tracking and copy of registration with National Transport and Safety Authority (NTSA) vehicle registration in joint names of appellant and the respondent.

ANALYSIS

5. I have considered parties affidavit evidence and their written submissions. The granting of an injunction is discretionary. In the case **PATRICIA NJIRI & 3 OTHERS VS. NATIONAL MUSEUM OF KENYA (2004) eKLR** the court considered that discretionary power when entertaining an injunction application pending appeal and stated:-

“a. An order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous.

b. The discretion should be refused where it would inflict greater hardship than it would avoid.

c. The applicant must show that to refuse the injunction would render the appeal nugatory.

d. The court should also be guided by the principles in *GIELLA V CASSMAN BROWN [1973] EA 358.*”

6. I have considered the ruling of Thika Court and on prima facie basis, I find the appellant has not responded to the issues raised therein, by the trial court. Conversely, the respondent has argued, with documents supporting its argument that the vehicle is security for a loan, which loan has not been repaid. In my view, I find that greater hardship will be inflicted on the respondent than on the appellant if the injunction is granted.

7. In the case ***NGURUMA LIMITED VS. JAN BONDE NIELSEN & 2 OTHERS (2014) eKLR*** the Court of Appeal held that an applicant seeking injunction must surmount the three principles of granting an injunction sequentially. This is what the court stated in that case:-

“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. In this case, my finding is that the appellant has not proved a *prima facie* case with probability of success. Having not proved a *prima facie* case and because he cannot leap-frog to the other principles of granting an injunction, the application has no merit.

9. Accordingly, because the appellant has failed to prove he has *prima facie* case with probability of success, the Notice of Motion dated 11th May, 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

Appellant/applicant : Mr. Njoroge

Respondents : Mr. Otieno

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE