



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 19 OF 2012

GEORGE MICHUGU KAMAU.....PLAINTIFF/ RESPONDENT

VERSUS

LILLIES HOSTEL LIMITED.....1ST DEFENDANT/APPLICANT

CFC STANBIC BANK LIMITED.....2ND DEFENDANT

RULING

1. The application dated 24th November, 2020 seeks orders that:

a) Spent

b) Spent

c) The honourable court be pleased to order release to the 1st Defendant of motor vehicle registration number KBF 400A and motor vehicle registration number KAY 589E currently parked at the Central Police Station parking yard pending hearing and determination of this application

d) That this honourable court be pleased to order the Divisional Criminal Investigation Officer (DCIO) Central Police Station to assist in the enforcement of the order (c) hereinabove.

e) The Plaintiffs' suit and/or Plaintiff filed herein on 23rd January, 2012 as against the 1st Defendant be struck out.

f) The costs of this application and the entire suit be in favour of the 1st Defendant/Applicant to be borne by the Plaintiff.

2. The application is premised on the grounds set out on the face of the application and is supported by the affidavit sworn by the 1st Defendant/Applicant. It is stated that the suit herein was filed on 20th November, 2012 but that the Plaintiff has failed to prosecute the same. That the continued existence of this suit is prejudicial to the Applicant who has been deprived of the right to her property and the use of her motor vehicles. That the suit herein discloses no reasonable cause of action against the Applicant as there is no privity of contract. It is further averred that the suit is an abuse of the process of the court as the Plaintiff has not complied with the interlocutory orders herein hence the recovery of the motor vehicles by the police.

3. In a replying affidavit filed by the Plaintiff in opposition to the application, it is stated that the Plaintiff has recently changed his Advocates in order to expedite this matter. It is stated that the Applicant is trying to short circuit the court process before it has been determined who is the lawful owner of the motor vehicles. That the Applicant is also trying to circumvent the proceedings herein by having the motor vehicles in question impounded by the police.

4. The 2nd Defendant did not participate in the application.

5. I have considered the application, the response thereof and the written submissions filed by the advocates for the respective parties.

6. On 18th April, 2012 orders were made herein that the Plaintiff do continue with the possession of the motor vehicles the subject of the suit pending the hearing and disposal of the Notice of Motion dated 20th January, 2012. The restriction that the Plaintiff should not drive or otherwise use the motor vehicles was removed, provided that the two motor vehicles were comprehensively insured. The application dated

20th January, 2012 is still pending, eight years down the line. I agree with the Defendant on the fact that they needed not come to court as the orders had already lapsed by effluxion of time. I am guided by the Court of Appeal's holding in **Barclays Bank of Kenya Limited v Henry Ndungu Kinuthia & another [2018] eKLR** when faced with a similar question where it was stated;

“ It is not disputed that as at the time when the appellant purported to issue a notification of sale and a 45 days redemption notice dated 16th April 2014, a period of three years and two months had lapsed from the time that the orders of interlocutory injunction were issued on 22nd February 2011. No attempt was made to have the orders extended by the court and therefore the court had no opportunity to consider whether there was any sufficient reason to extend the order of interlocutory injunction beyond the 12 months. We reiterate what this Court stated in Erick Kimingichi Wapang'ana & Another v. Equity Bank Limited & Another [2015] eKLR that:

“Rule 6 Order 40 was made in clear cognizance of the preceding Rules in that order. It therefore follows that notwithstanding the wording of any order of interlocutory injunction, the same lapses if the suit in which it was made is not determined within twelve months “unless”, as the Rule provides, “for any sufficient reason the court orders otherwise.....In this case there was no subsequent order extending the injunction. Having been issued on 11th October 2011, the injunction lapsed on 12th October 2012”

7. The last time the orders the subject of the application were extended was on 11th November, 2013. There were no other proceedings herein until 12th January, 2015 when the application dated 11th October, 2014 was filed. Subsequently several other applications were filed by the parties herein. There was however no extension of the interim orders since 11th November, 2013. Consequently, the said order lapsed at the end of the 12 Months from the 11th November, 2013. It is however noted that there was involvement of police officers in this civil matter without any courts orders when the motor vehicles were impounded and parked at the police station.

8. There has been a multiplicity of other applications that have been filed which are yet to be disposed. This has clogged the system and nothing seems to be moving. Although the Plaintiff is the prime mover of his case, it is noted that some of the applications have been filed by the 1st Defendant. It is difficult for this court at this stage of the case to blame the delay herein on any particular party.

9. This suit is therefore not an appropriate one for either the striking out of the suit or even the dismissal of the same for want of prosecution. The suit is however an old one and should be disposed of on priority basis.

10. With the foregoing, this court allows prayer (c) and (d) of the application. Prayer (e) is dismissed. The suit to go for hearing. Costs in cause.

DATE, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2021

B. THURANIRA JADEN

JUDGE