



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCC NO. 393 OF 2018

STINGRAY LIMITED.....PLAINTIFF

VERSUS

CHARTERHOUSE BANK LIMITED (Under Statutory Management).....1ST DEFENDANT

KENYA DEPOSIT INSURANCE CORPORATION.....2ND DEFENDANT

TAIBJEE & BHALLA ADVOCATES.....3RD DEFENDANT

RULING

1. Through the originating summons dated 22nd November 2018, the plaintiff seeks the following orders:

1. Spent

2. Spent

3. That an order do issue directing the 1st and 2nd defendant to immediately and unconditionally deliver up to this court and to release the title documents to the plaintiff property L.R. M.N./111/1591- Mombasa to enable the plaintiff to process the release of the funds due in repayment of the sums advanced to it and it's sister companies by the 1st defendant.

4. That an order do issue that the plaintiff is not liable for any accrued penalties or interest on the agreed raiment sum that may have arisen by reason of the 1st and 2nd defendants failure to release the title documents to the plaintiff.

5. Costs of this suit together with interest thereon at court rates; and

6. Any other or further relief that this Honourable court may deem fit and just to grant.

2. The summons were supported by the affidavit of the plaintiff's Director, Anjna K. Patel and was premised on the grounds that:

1. The 1st defendant is the Charterhouse Bank Limited currently under Statutory Management.

2. The 2nd defendant a body corporate established under the Kenya Deposit Insurance Act No. 10 of 2012, empowered under Section 34 of the Banking Act and all other applicable laws to assume the management control and conduct of the affairs and business of the 1st defendant, to exercise all the powers of the board of the 1st defendant whilst the 1st defendant is under statutory management, to manage and oversee the receivership and liquidation of the 1st defendant and to provide an insurance system for such bodies as provided by law.

3. It is the plaintiffs case that the 2nd defendant is presently charged with the duty to oversee the management of all affairs of the 1st defendant whilst it is under Statutory Management and to take charge and custody of amongst other items all assets, securities and transferrable documents belonging to the 1st defendant and to undertake the realization and liquidation process of the 1st defendant.

4. It is further the plaintiff's case that in exercise of this mandate, the 2nd defendant is the body empowered by law to be held accountable for securities deposited by the plaintiffs with the 1st defendant.

5. At all material times the plaintiff was and still is the registered owner of the property known as L.R. M.N./111/1591- Mombasa.

6. In return for various financial advances and accommodations from the 1st defendant, the plaintiff charged its various properties which inter alia included the property known as L.R. M.N./111/1591- Mombasa as security of the above said advances.

7. Sometimes in 2008, the 1st defendant called upon the plaintiff to repay the sums advanced by the 1st defendant to the plaintiff and after extensive discussion, it was agreed that the plaintiff would repay to the 1st defendant an agreed sum of Kshs 28,114,335.20 to clear the outstanding advances and sums owed on accounts of the plaintiff, its sister companies AUTO IMPORT LIMITED, AUTOMOTIVE INDUSTRIAL BATTERY MANUFACTURERS(K) LIMITED and on accounts of their directors.

8. It was further agreed that to facilitate the above payment, the 1st defendant would in return would in return would execute a discharge of titles to the various properties and release the title documents to the said properties to the plaintiff.

9. Despite the plaintiff and its sister companies AUTO IMPORT LIMITED, AUTOMOTIVE INDUSTRIAL BATTERY MANUFACTURERS(K) LIMITED being ready and willing to pay the aforesaid agreed sum to the 1st defendant and despite repeated demands, the 1st defendant has failed, declined or is unable to discharge and release to the plaintiff, the title documents to the above said security being L.R. M.N./111/1591- Mombasa on the grounds that the same is allegedly held by the 1st defendants lawyers as lien for certain undisclosed liabilities.

10. It is the plaintiffs position that said title documents to the security L.R. M.N./111/1591- Mombasa ought to be legally held and in the custody of the 1st and or 2nd defendant.

11. By reason of the 1st and 2nd defendant's failure to execute the relevant discharge to the said security and to release the title documents to the plaintiff, the plaintiff has and remains unable to process the release of the funds due towards the repayment of the sums advanced to it and its sister companies by the 1st defendant and continues to incur loss and accrued charges on account of the 1st and or 2nd defendant actions.

12. The plaintiff therefore prays for an order that the defendants be ordered to immediately and unconditionally release the title documents to the plaintiff property L.R. M.N./111/1591- Mombasa to enable the plaintiff to process the release of the funds due towards the repayment of the sums advanced to it and its sister companies by the defendants.

13. Despite demand made and notice of intention to sue having been duly given, the defendants have refused, neglected or failed to settle the plaintiff's claim hence rendering this suit necessary.

14. There is real and imminent risk of the plaintiff losing its properties by reason of the defendants actions.

15. The plaintiff therefore prays that pending the hearing and determination of this application and of this suit, the defendants be ordered to deliver to this court for safe custody, the title documents to the plaintiff property L.R. M.N./111/1591- Mombasa.

3. The summons were not opposed by the defendants, however, through an application dated 7th March 2019, the 1st defendants sought and obtained leave to enjoin the firm of **Taibjee & Bhalla Advocates** as the 3rd defendant in these proceedings.

4. At the hearing of the originating summons, **Mr. Mwangi** for the plaintiff submitted that it was not in dispute that the plaintiff obtained a loan from the 1st defendant and that the security for the said loan was deposited with the 3rd defendant who still holds the said security being title document in respect to the plaintiff's property LR.MN/111/1591 - Mombasa (hereinafter "**the suit property**").

5. Counsel submitted that the 3rd defendant was ready to release the said title document as long as such release is initiated through and express order of the court.

6. It was however submitted that the only reason for the 3rd defendant unwillingness to release the title was the claim that it was holding it as lien for their legal fees.

7. Counsel submitted that it was improper for the 3rd defendant to hold the plaintiff's title as lien for fees which it was owed by another party in this case, the 1st defendant for whom they had acted.

8. **Mr. Chacha Odera**, learned counsel for the 1st and 2nd defendants submitted that the only lien that the 3rd defendant could have are in respect to its clients and not the plaintiff. It was submitted that the advocates fees is a separate matter that the 3rd defendant can pursue in a separate litigation. Counsel observed that the alleged legal fees had neither been taxed, agreed upon nor raised. Counsel submitted that the 3rd defendant should release the title documents to the plaintiff.

9. **Mr. Irungu**, learned counsel for the 3rd defendant submitted that the 3rd defendant can only release the title documents through an express

order of the court since the Central Bank of Kenya did not respond to their query on who the title documents should be released to. Counsel conceded that the 3rd defendant was willing to release the title as long as the court orders it to do so.

10. I have considered the Originating Summons and the submissions by counsel for the parties herein. It is not contested that the 3rd defendant holds the plaintiff's title documents and that the said documents ought to be released to the plaintiff.

11. This court is therefore at a loss to why the 3rd defendant should resist or be hesitant to release the plaintiffs title documents on the basis that it is owed legal fees by the 1st defendant. I find that the 3rd defendant will still be at liberty to demand and/or tax its bill of costs for any fees owed to it by the 1st defendant without the involvement of the plaintiff who was not its client in the first place.

12. In a nutshell, I find that the Originating Summons dated 22nd November 2018 is merited. I therefore allow it and direct that the plaintiffs said title documents, said to be in the custody of the 3rd defendant, be immediately released to the plaintiff's advocate to for onward transmission to the plaintiff within 3 days from the date of this ruling, to enable the plaintiff process the release of the funds due in repayment of the sums advanced to it and its sister companies by the 1st defendant. I make no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 27th day of February 2020.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Makori for Khan for the applicant

Mr. Nganga for Miss Irungu for the 3rd defendant.

No appearance for the respondent.

Court Assistant - Sylvia