



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 46 OF 2017

LAKE NAKURU LODGE LIMITED.....PLAINTIFF/APPLICANT

-VERSUS-

**THE KENYA DEPOSIT INSURANCE CORPORATION SUED AS RECEIVER
MANAGER OF CHASE BANK (K) LIMITED.....DEFENDANT/RESPONDENT**

RULING

1. The plaintiff Lake Nakuru Lodge Limited brought this case against the Defendant in November 2018 seeking a declaration that the then scheduled public sale of its properties offered as securities to secure a purported loan of Kshs.58,695,400/= plus other charges was unlawful for want of compliance with the provisions of the **Land Act No. 6 of 2012**.

2. It further sought from the defendant an accurate account of the principal loan and interest due to be rendered pursuant to **Section 44 of the Banking Act**. Simultaneously with the suit, the plaintiff by an application dated the 20th July 2018 sought a mandatory injunction to restrain the defendant by its agents and servants from selling the charged properties in any manner or at all.

3. The dispute is therefore a dispute between a lender and borrower of certain amounts which the borrow seeks clarifications as to the alleged loan amount interest and arrears of the same, hence the request for an accurate and true account.

By an order of injunction dated the 20th July 2018, the (Hon. R. Korir J) restrained the defendants from any attempts to realise the securities pending hearing and determination of the suit.

4. While the order mandatory injunction was inforce, and the case pending hearing and determination the Defendant referred the plaintiffs name to the Credit Reference Bureau(CRB) without any notice which incident came to the plaintiff's knowledge in November 2018 when it was denied credit facilities by a financial institution citing this suit and despite requesting the defendant for the justification, non was rendered.

5. As a result of the Defendant's adverse actions, the plaintiff approached the court by an application dated 7th December 2018 seeking that

1. Spent

2. Spent

3. That pending hearing and determination of this suit the court be pleased to issue a mandatory injunction against the Defendant/ itself, it agents, servants and/or employees compelling them to recall, remove and/or withdraw the reference of the Applicant's name to the Credit Reference Bureau.

6. Samuel Warugu Kimotho a director of the plaintiff swore the supporting affidavit in support of the application.

Despite being served with the application and hearing notice on the 14th December 2018 no responses have been nor any representation in court by the defendant. The application dated 7th December 2018 therefore stood unchallenged.

7. Mr. Manyara advocate for the applicant urged that the Defendant's motive and actions to refer the plaintiff to the Credit Reference Bureau was malicious, mischievous and illegal and made to discredit the creditworthiness, capacity standing, character and general reputation of the applicant.

8. It has been urged that the defendant's action has affected the Applicants ability to borrow from any financial institution on account of the

negative listing with the CRB at the defendants instance.

9. I have considered the suit as filed.

What is at issue in the suit is a debt, not plaintiff's inability to repay the loan as stated in the pleadings. The court order of injunction ought to remain in force pending finalisation of the suit. There is therefore no doubt that the reference to the CRB by the defendant was made in bad faith to punish the plaintiff and to disable it economically.

10. A mandatory injunction may be granted at an interlocutory stage of a case when circumstances demand so.

The principles on which a court will grant a mandatory injunction are well stated in the case **Nguruman Limited –vs- Jan Bonde Nielsen & 2 Others C.A No. 77 of 2012** – thus

“In an interlocutory 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 temporary injunction is not granted, and

(c) ally any doubts as to(b) showing that the balance of convenience is in his favour.

11. In **Lucy Wangui Gachara –vs- Minudi Okemba Lore (2015) e KLR** the Court of Appeal rendered that the court has jurisdiction to grant a mandatory injunction at the interlocutory stage but such injunction should be granted in the clearest of cases as such grant may determine the issues in the suit in a summary manner.

12. Circumstances that may demand grant of such mandatory injunction at interlocutory stage is where the injunction involves a simple act that could be easily reversal or remedied should the court find otherwise after trial.

13. It will however not grant such injunction if the damage feared by the plaintiff is trivial or where the detriment would inflict is disproportionate to the benefit it would confer.

14. In the instant suit, the plaintiff has been disabled in its business as it cannot be able to borrow or access credit as a result of its referral to the CRB. The damage thereof cannot be said to be trivial and can cause irreparable damage.

The main suit is yet to be heard and determined. The injunction can easily be reversed if the defendant wins the case thus there would be no prejudice or loss if the referral to CRB is reversed.

15. I have rendered that the suit in court is *prima facie* about a debt, not the plaintiff's inability to service the loan. That aspect can only be determined once an order to pay the correct loan arrears by rendering correct and accurate statement of accounts of the plaintiffs loan Account with the defendant and there is default in repayment. Before then, it is my view that the plaintiff ought not be punished while the suit is unheard.

16. The above principles were reiterated in the case **Tom Onyango –vs- Mimosa Investments Ltd (2017) e KLR** when again the Court of Appeal held that an interlocutory mandatory injunction maybe granted in clear cases where it is satisfied that the case is unusually strong and clear.

17. I am persuaded that the defendant had no justifiable cause to refer the plaintiff to CRB as the plaintiff had not failed or defaulted to service the loan as the pertinent questions stated in the plaint have not been resolved. It is only upon resolution of the said issues and the correct and accurate loan amount determined, and there is default that the defendant would be justified in referring the plaintiff to the CRB.

18. Consequently it is my finding that the application by the plaintiff dated 7th December 2018 is merited.

Prayer 3 thereof is granted.

19. Consequently a mandatory injunction is therefore issued against the defendant by itself, its agents and/or servants compelling it to recall, remove and/or withdraw the reference of the plaintiff name to the Credit Reference Bureau within 21 days of this Ruling.

20. The costs of this application shall be borne by the defendant to the plaintiff.

21. **Nakuru HCCC No. 24 of 2017 Lake Naivasha Crescent Farm Ltd –vs- Kenya Deposit Insurance Corporation** sued as Receiver Manager of **Chase Bank (K) Ltd** is a case similar to the present one. The plaintiff by its application dated 7th December 2018 seeks similar reliefs.

22. This ruling shall therefore apply to the application in Nakuru HCCC No.24 of 2017 dated 7th December 2018.

Dated, signed and delivered this 29th Day of January 2019.

J.N. MULWA

JUDGE