



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 198 OF 2017**

**CHANIA COMMUNITY TRUST GROUP (formerly**

**ACK Kairi Parish Trust Group suing through its**

**officials; Susan Wairimu Mburu, Esther**

**Nyambura Kariuki & Samuel Karanja Wandui).....APPELLANT**

**-V E R S U S -**

**EQUITY BANK KENYA LTD.....1<sup>ST</sup> RESPONDENT**

**SUSAN WAIRIMU MBURU, ESTHR NYAMBURA**

**KARIUKI & SAMUEL KARANJA WANDUI(sued as officials**

**of ACK Kairi parish Trust Group and as the signatories of**

**Account no. [xxxx] the 1<sup>st</sup> defendant bank).....2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the ruling and order of Hon. M. Obura (Mrs) Senior Principal Magistrate*

*delivered and signed at Nairobi on 30<sup>th</sup> March 2017 in Civil Case no. 438 of 2017)*

**JUDGEMENT**

1) Chania Community Trust Group (formerly A.C.K. Kairi Parish Trust Group) the appellant herein, through its officials filed an action against Equity Bank (K) Ltd, the 1st respondent herein, before the Chief Magistrate's Court vide the plaint dated 26th January 2017 in which it sought for judgment in the following terms:

- i. A declaration that the defendant's actions of freezing the plaintiff's account no. [xxxx] is unlawful, null and void ab initio.*
- ii. A permanent mandatory injunction directing the plaintiff, its servants and/or agent to forthwith lift the freeze on the plaintiff's bank account no. [xxxx] and allow the plaintiff to conduct such banking transactions as it may desire including but not limited to withdrawal of all the funds held therein.*
- iii. A permanent injunction restraining the defendant from interfering with the plaintiff's operation of its account nos. [xxxx] and [xxxx] .*
- iv. Exemplary damages.*
- v. Costs of this suit plus interest.*
- vi. Legal fees for issuance of the demand for kshs.25,000.*

vii. Any other relief that the honourable court may deem fit to grant.

2) The 1<sup>st</sup> respondent filed a defence to resist the plaintiff's claim arguing that the plaintiff did not disclose any cause of action. The appellant took out the motion dated 17th February 2017 in which it sought for *inter alia* a mandatory order of injunction to compel the respondent to lift the freezing of bank account no. [xxxx] , Thika Branch so that it can freely operate the account pending the hearing and determination of the suit.

3) Hon. A. M. Ombura, learned Senior Principal Magistrate heard and dismissed the application. Being unhappy with the dismissal order, the appellant preferred this appeal.

4) The appellant put forward the following grounds in its memorandum of appeal:

**1. THAT the learned magistrate erred in law and in fact in failing to appreciate that the matter in issue in this case, which is the unlawful freezing of the customer's bank account, is one strictly between a bank and its customers and did not necessitate joinder of persons who are not party to that relationship.**

**2. THAT the learned magistrate erred in law and in fact in failing to appreciate that while the 2<sup>nd</sup> defendant are also officials of the plaintiff, they had only been enjoined pursuant to an order of that court having failed to appreciate the mere change of name by one and the same entity.**

**3. THAT the learned magistrate erred in law and in fact in failing to appreciate that the parties to the suit were the only necessary and proper parties in the dispute being the bank and its customers.**

**4. THAT the learned magistrate erred in law and in fact in finding that there were other unnamed parties who stood to be affected by the orders of court and hence who ought to have been enjoined, yet those unnamed parties had not notified the plaintiff of any claim they may have had on the subject account.**

**5. THAT the learned magistrate erred in law and in fact in failing to appreciate that without any notice or communication from the 1<sup>st</sup> defendant on the freezing of its bank account, the plaintiff or person purportedly interested could not have possibly known the reasons behind the freeze and so as to enjoin them in the suit.**

**6. THAT the learned magistrate erred in law and in fact in finding that the plaintiff/applicant's bona fide officials who are signatories to the frozen bank account do not have the capacity to operate the subject bank account or to sue on behalf of its members.**

**7. THAT the learned magistrate erred in fact in the absence of any evidence, that there has been a problem with the management of funds held in the frozen bank account. These are final determinations which cannot be expressed at the interlocutory stage.**

**8. THAT the learned magistrate erred in law and in fact in failing to appreciate that the case of unilateral freezing of a customer's account by a bank was a simple, clear and straight forward one that necessitated the issue of a mandatory injunction at the interlocutory stage.**

**9. THAT the learned magistrate erred in law and in fact in failing to appreciate that the unilateral freezing of a customer's account by a bank at the behest of a third party constitutes special circumstances worthy of being remedied through a mandatory injunction at the interlocutory stage.**

**10. THAT the learned magistrate erred in law and in fact in failing to appreciate sufficiently or at all the oral submissions made and authorities cited by the plaintiff/appellant's counsel.**

5) When the appeal came up for hearing, this court directed the parties to file and exchange written submissions. I have re-evaluated the arguments that were made before the trial court. I have also considered the rival written submissions. Though the appellant put forward a total of ten grounds of appeal, I think the main ground that commends itself for determination is whether the learned Senior Principal Magistrate properly considered and determined the appellant's motion.

6) I have already stated that in the motion dated 17<sup>th</sup> February 2017, the appellant sought for an order of mandatory injunction to compel the 1st respondent to lift the freeze on the appellant's bank account. The appellant argued *inter alia* that the 1st respondent freeze its bank account without any just cause and without due notice. It was argued that the action was unlawful, unreasonable, arbitrary and flagrant breach of the privileged bank-client relationship. The 1st respondent opposed the aforesaid motion arguing that the appellant had failed to show the legal personality to have the *locus standi* to seek for the orders.

- 7) The 1<sup>st</sup> respondent also pointed out that if the orders sought were granted the interest of the appellant's over 2300 members would be put to peril in that they may lose their savings and may expose the 1st respondent to a multiplicity of suits. The 1st respondent further argued that there are no special circumstances to grant the order neither the case is clear.
- 8) The learned Principal Magistrate considered the rival arguments and came to the conclusion that the motion lacked merit. The trial court pointed out that there was doubt as to the capacity of the officials of the appellant to operate the frozen account. It was also pointed out that there has been a problem with the management of the funds. It was further pointed out that the account is still in the name of Kairi Parish Trust Group.
- 9) On appeal, the appellant urged this court to find that the 1<sup>st</sup> respondent's action is oppressive, unjustified and amounts to illegal appropriation of its funds and therefore it should have been granted the orders by the trial court. The appellant further argued that its case against the arbitrary and unilateral freezing of its bank account by the 1st respondent without notice is simple and straight-forward which should have convinced the trial court to grant a mandatory order of injunction.
- 10) The appellant further argued that the conduct of the 1<sup>st</sup> respondent constituted exceptional and special circumstances that supports issuance of a mandatory order of injunction.
- 11) The 1<sup>st</sup> respondent opposed the appeal arguing that the appellant's officials had failed to provide the trust deed or any other document that show that they are indeed legal persons capable of being granted the orders sought and therefore they lacked the capacity to institute the suit and this appeal. It was pointed out that the appellant's officials also enjoined themselves as plaintiffs and at the same time as defendants which is untenable in law and practice.
- 12) The principles to be considered when determining an application for mandatory injunction were restated by the Court of Appeal in the case of **Kenya Airports Authority =vs= Paul Njogu Mungai & 2 others (1997) eKLR** in which the court cited the passage in **Halisbury's Laws of England** thus:
- “A mandatory injunction can be granted on an interlocutory application, as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application.”**
- 13) It is clear from the material placed before this court that there is doubt as to whether the appellant's officials had the capacity or *locus standi* to file the suit and this appeal. The appellant also compounded the situation when its officials sought to be enjoined as plaintiffs in their capacities as defendants yet they are on record as having filed the suit as officials of the appellant.
- 14) It is for the above reasons that the learned Senior Principal Magistrate stated that the appellant created confusion hence a fair decision was to have the suit heard on its merit.
- 15) In my humble opinion, I think the trial magistrate cannot be faulted in the manner he dealt with the motion. It is apparent that this case is not one of those a court can say to be clear. The special circumstances that are apparent militate against granting an order of mandatory injunction at this interlocutory stage. In my view, this is a case which should be determined by hearing the substantive suit.
- 16) In the end, I find no merit in this appeal. The same is dismissed with costs to the 1st respondent.

**Dated, Signed and Delivered in open court this 31<sup>st</sup> day of May, 2019.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent