



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. E 124 OF 2018

SHOW PARK LIMITED.....1ST PLAINTIFF

DANIEL KAINA KARIUKI.....2ND PLAINTIFF

-VERSUS-

BUSINESS PARTNERS

INTERNATIONAL (K) LTD.....1ST DEFENDANT

KENYA SHIELD AUCTIONEERS.....2ND DEFENDANT

RULING

1. Show Park Limited, who I shall henceforth refer to as **Show Park**, has two different suits before this Court touching on the same issues.
2. In this case **HCC E 124 of 2018** Show Park is the 1st Plaintiff and **Daniel Kaina Kariuki** is the 2nd Plaintiff. Business Partners International Kenya Limited (**Business Partners**) is the 1st Defendant and Kenya Shield Auctioneers is the 2nd Defendant.
3. Show Park's claim in **HCC E 124 of 2018**, as pleaded, is that Business Partners advanced to it loan facilities which included a hire purchase facility to purchase a double facer machine (**the Machine**). To secure that facility Business Partners obtained a legal charge over **L. R. No. 76/537** located in Buruburu Estate. That Business Partners transmitted the loan amount to a company in China, which company was manufacturing the machine. To date the said machine has not been delivered to Show Park. This Show Park stated adversely affected its business resulting in its default in repayment of the facility. On that basis Show Park sought injunction to permanently restrain Business Partners from realizing its security, by auctioning the charged property.
4. In **HCC E124 of 2018** Show Park sought Interlocutory Injunction Order, by **Notice of Motion** dated **23rd October 2018**, pending the hearing and determination of the main suit. When that application was fixed for hearing inter partes, on **25th October 2018**, the Show Park failed to attend Court and the Application was dismissed for non-attendance. Show Park filed a **Notice of Motion** dated **25th October 2018** seeking to reinstate the application dated **23rd October 2018**, which was dismissed for non-attendance.
5. What is of great concern to this Court is that there was a subsisting suit **HCCC No. 207 of 2018**, when **HCCC E 124 of 2018** was filed. **HCCC 207 of 2018** essentially involves the same parties.
6. In **HCCC 207 of 2018** the Plaintiff is Show Park as the sole Plaintiff while Business Partners is the 1st Defendant and Kenya Shield auctioneer is the 2nd Defendant.
7. Show Park pleaded, in **HCC 207 of 2018** exactly the same issues except in that case it did not seem to blame Business Partners for failure to obtain the machine from China.
8. In **HCCC No. 207 of 2018** the parties entered into a consent before Court on **12th June 2018**. By that consent Show Park agreed to regularize its account with Business partners by paying within **14 days** monthly arrears of instalments from **January to June 2018**. Further Show Park agreed to give proposal on the settlement of the outstanding loan.
9. On **3rd July 2018**, when parties appeared before Court, the Court was informed that Show Park had failed to make payments as per the consent.

10. It does seem that after failing to pay as per the consent, Show Park filed yet another injunction application in **HCCC 207 of 2018**, which was dated **24th July 2018**. The Court on **27th July 2018** declined to grant orders in that application in view of Show Park's failure to obey the consent order. It is on that refusal that Show Park filed **HCCC E 124 of 2018**.

11. I have set out that background in order to show that Show Park has abused the process of the Court by filing two similar suits. Such a party does not deserve the exercise of discretion of the Court in its favour.

12. This Ruling relates to the Notice of Motion dated **25th October 2018** in **HCCC E 124 of 2018**. By that application Show Park seeks the reinstatement of the dismissed Notice of Motion dated **23rd October 2018**. The dismissed Notice of Motion sought the same orders sought in **HCCC No. 207 of 2018**, filed earlier.

13. To permit the reinstatement would be to allow the continued abuse of the Court process by Show Park.

14. The Court of Appeal in the case; ***Tana and Athi Rivers Development Authority –vs- Jeremiah KimighoMwakio& 3 others [2015] eKLR***, discussed what can be considered an abuse of the Court process and stated:-

“What does constitute an abuse of process of the Court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of ‘abuse of process.’ It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of Court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

15. What is stated in that case in my view is what Show Park has done by filing **HCCC E 124 OF 2018**. There can be no reason to reinstate an application which will lead to continued abuse of the Court process.

16. Accordingly I make the following orders:-

a) The Application dated 25th October 2018, for the reasons stated above, is hereby dismissed with costs to the Defendants.

b) At the reading of this Ruling the Plaintiff shall be given a date to show cause why this suit should not be dismissed for being an abuse of the process of the Court because of the existence of HCCC 207 OF 2018.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Ruling read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiffs

..... for the Defendants

MARY KASANGO

JUDGE