

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL CASE NO. 95 OF 2018

JUJA COFFEE EXPORTERS LIMITED.....PLAINTIFF

VERSUS

1. NATIONAL BANK OF KENYA LIMITED

2. VIRGIN PACKAGING LIMITED

3. BAKHRESA GRAIN MILLING (K) LIMITED

4. GRAIN BULK HANDLERS LIMITED.....DEFENDANTS

R U L I N G

1. Leave to appeal is a right this court considers should not be denied to any litigant so desirous. I do grant to the plaintiff leave to appeal against the orders of this afternoon.

2. On injunction pending appeal, I do appreciate that counsel bases his application and request upon the principles of law that foundation of a suit need to be preserved so that it is not rendered worthless. I do entertain the view that this court and indeed any other court whose decision is sought to be challenged on appeal ought to appreciate that the appellants court may in its own appellate jurisdiction disturb the impugned decision.

3. Accordingly, the injunction pending appeal by the trial court must be seen to serve the very purpose of the court system and is issued pursuant to the inherent powers of the court to do justice and avoid abuse of process.

4. But the inherent powers of the court is the reserve of power the court exercises by its own existence and purpose – to do justice. Being an injunction, by its nature a court must consider the worse case scenario that would result if it be denied.

5. The dispute here is a property which has been sold pursuant to the statutory power under legal charge. There are papers filed to show that before sale, the property was valued and a sale price has been disclosed. Any loss that may be suffered by the plaintiff in the event of success on appeal is thus capable of being ascertained and determined in monetary terms. For that reason, I do not consider that any injury to the plaintiff if the contract be concluded before the appeal is heard will be incapable of compensation by an award of damages.

6. Instead, I do consider that the conclusion of the sale will be of benefit to both sides in that the 1st defendant will have recovered its debt or part thereof and the plaintiff shall have been released of the debt burden or part thereof and the usual bank interests by its account being credited with the purchase price.

7. All in all, I am saying that the informal application has not availed to me the benefit to understand the difficulty of injustice to be suffered by the plaintiff. For that reason, I decline to grant an injunction pending appeal as prayed by the plaintiff.

Dated and delivered at Mombasa this 19th day of December 2018.

P.J.O. OTIENO

JUDGE