



REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PETITION NO. 3 OF 2015

BETWEEN

FELIX APOLLO OWUOR PETITIONER

AND

KENYA INDUSTRIAL ESTATES LIMITED RESPONDENT

JUDGMENT

Introduction

1. In the petition dated 15th October 2015, the petitioner seeks the following reliefs;

(1) A permanent injunction restraining the respondent whether acting by itself, through its agents, employees, servants or any manner whatsoever from adversely referring the petitioner to the Credit Reference Bureau in relation to the subject matter herein.

(2) A declaration the claim by the respondent against the petitioner is inaccurate, overtaken by events, false, misleading or erroneous and statutorily barred.

(3) A declaration the Credit Reference Bureau, 2013 do not operate retrogressively and do not apply to the transaction between the petitioner and the respondent.

(4) A declaration that the petitioner herein has a right to their good name, character and reputation and also have inherent right to their dignity which right must be protected and respected under Article 28 of the Constitution.

(5) General damages for infringement of the petitioner's rights and freedoms under the Constitution of Kenya, 2010.

(6) Costs of and incidentals thereto to be paid to the petitioner by the respondent.

(7) Any other orders.

The facts

2. The facts leading to this petition are in dispute and are set out in the petitioner's deposition sworn on 15th October 2015 and the deposition of Edna Adala, the respondent's Manager-Legal Services, sworn on 2nd December 2015. The petitioner was a tenant at the respondent's premises in Homa Bay. He defaulted

in paying rent causing the respondent to issue several notices to that effect. By a letter dated 15th June 2004, the respondent issued a notice to the petitioner to vacate the premises on 1st August 2004. On his part, the petitioner notified the respondent by his letter dated 30th November 1999, that he was unable to pay rent and would vacate the premises on 31st December 1999. According to the statement of account produced by the respondent the last credit on the rent account was on 28th April 2006.

3. The gravamen of the petitioner's case is that by a letter dated 30th September 2015, the respondent issued a notice titled, "*Pre-listing notification issued pursuant to Regulation 50(1)(a) of the Credit Reference Bureau Regulations, 2013.*" The letter stated in part that, "*Please note that your rent account is currently in default. It is outstanding at Kshs. 298,300.00 which must be cleared before we exit you from our records. We hereby notify you that we will proceed to adversely list you with the CRBs if you do not clear the outstanding balance in the next 21 days.*"

The Submissions

4. The thrust of the petitioner's case is that he has a right to his privacy, dignity and reputation and that his rights are being violated by the respondent trying to recover a bad and stature barred debt. He avers that his constitutional rights to privacy protected under **Article 31** of the Constitution are threatened with violation and if not restrained, the respondent's action will adversely affect his reputation.

5. The respondent contends that the petitioner is premature as the respondent had not written any letter referring the petitioner to the Credit Reference Bureau. It further contended that the petitioner was indebted to it and that it had always notified the petitioner of his indebtedness and that he was fully aware of such indebtedness.

Disposition

6. The issue in this case is whether the petitioner's fundamental rights and freedoms were violated when the respondent threatened to refer him to the Credit Reference Bureau.

7. The advent of sharing credit information has made it easier for people with a proven credit record to easily obtain credit. Such information is intended to assist customers negotiate better interest rates with creditors while at the same time motivating them to maintain good repayment behavior. On the other hand, adverse credit listing has the effect of hindering access to credit for those adversely mentioned and affecting their general reputation and credit. At the core of credit information is the right to privacy and the protection against wrong and harmful information being released. This is the protection afforded by the right to privacy protected by **Article 31** of the Constitution.

8. Under **Article 22** of the Constitution, any person has the right to apply for relief to this court in the event a right is being threatened. What constitutes such a threat is a question of fact. In this case the alleged threat is to refer the debt that is already statute barred. I have considered the fact the last payment according to the respondent's statement was made on 28th April 2006. This is when default occurred. By that time the petitioner had already left the demised premises. The respondent issued the threat to refer the matter to the Credit Reference Bureau on 30th September 2015.

9. Under the **sections 4 and 7** of the ***Limitation of Actions Act (Chapter 22 of the Laws of Kenya)***, actions for recovery of a debt or rent may not be brought after the end of six years after the debt or rent accrued respectively. In this case therefore, the recovery was already statute barred and could not be revived by referring the matter to the Credit Reference Bureau. I therefore find the respondent threatened the petitioner's right to privacy.

10. Having found a violation, this court is entitled to frame a remedy that is suitable to mitigate the injury or threat of injury sustained by the petitioner. In the circumstances, I now make the following order;

(a) A permanent injunction restraining the respondent whether acting by itself, through its agents,

employees, servants or any manner whatsoever from adversely referring the petitioner to the Credit Reference Bureau in relation to the tenancy of Homa Bay Administration Block Office 1A and 1B between the petitioner and the respondent.

(b) The respondent shall bear the costs of the petition assessed at Kshs. 15,000/- all inclusive.

DATED and DELIVERED at HOMA BAY this 12th day of February 2016.

D.S. MAJANJA

JUDGE

Mr Kahi instructed by D. C. Chitwah and Company Advocates for the petitioner.

Mr Otara instructed by Mose, Mose and Millimo Advocates for the respondent.