



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

ELC. NO. 63 OF 2014.

1. GILBERT WESONGA MUGENI

2. LAWRENCE OJIAMBO MUGENI

3. CONSOLATA MUGENI

(T/A Colagi Builders and Distributors)PLAINTIFFS/RESPONDENTS

VERSUS

ECO BANK KENYA LTD.....DEFENDANT/APPLICANT

AND

EMILY ELIZABETH NABWIRE.....INTERESTED PARTY

R U L I N G.

The Applicant, ECO Bank Kenya Limited, filed the application dated 30th May, 2014 through M/S. Ocharo Kebira & co. Advocates for orders to “ *discharge, vary or set aside the order of temporary injunction that was granted herein on the 2nd day of April, 2014.*” The Applicant as an alternative, prays that the order of temporary injunction be set aside and the application be heard inter partes. The application is premised on four grounds on the face of it and is further supported by the affidavits of Dickson Lanogwa and Ocharo Kebira sworn on 2nd July, 2014 and a further affidavit by Dickson Lanogwa filed on 7th October, 2014 whose date of commissioning is not indicated.

The application is opposed by Gilbert Wesonga Mugeni and Lawrence Ojiambo Mugeni herein after referred to as 1st and 2nd Respondent through the affidavit of Gilbert Wesonga Mugeni sworn on 9th July, 2014 and 5th October, 2014.

Mr. Ocharo and Mr. Makokha for the Applicant and Respondents respectively agreed on 16th October, 2014 to proceed with application dated 30th May, 2014 through written submissions. The Applicant filed their written submission dated 23rd October, 2014 on the same date while the Respondents filed theirs dated 4th November, 2014 on the 5th November, 2014. The matter was then mentioned on 6th November, 2014 and reserved for ruling on 28th January, 2015.

In the process of preparing, the an issue that had not been raised by the parties kept on popping up.

This is the issue of the court with jurisdiction to hear and determine the issues herein. This court must be satisfied that it has jurisdiction over the matter before making any determination on the issues raised.

A perusal of the plaint dated 25th March, 2014 and the defence dated 30th May, 2014 shows that the dispute herein emanates from the Distributorship Financing Facility arrangement dated 15th November, 2010 between the Respondents/Plaintiffs, on one part, and the Applicant/Defendant, on the other part. The Respondents charged land parcel Bukhayo/Bugengi/3586 with the Applicant to secure Kshs.6,000,000. This court's jurisdiction is to hear and determine disputes relating to the environment and the use and occupation of and title to land. The pleadings in this case do not disclose any dispute to the use, occupation of, and, or title to any parcel of land. The pleadings raises a dispute over the status of accounts relating to the Distributorship Financing Facility dated 15th November, 2010 under which the Applicant loaned the Respondents Kshs.6,000,000, and the latter offered land parcel Bukhayo/Bugengi/3586 as security. The superior courts have held that where a party has offered a suit property as security for loan facilities that has been availed, the property becomes a commodity that could be sold off in accordance with the law in case of default in payment to recover the money lent and interest thereof. *See Kismani Holdings Limited & another -vs- Fidelity Bank Limited* [2013] eKLR and *Andrew M. Wanjohi -vs- Equity Building Society & Anor* [2006] eKLR.

Having formed the opinion that the issues raised in the main suit are commercial in nature, and the application dated 25th March, 2014 is based on the same facts, this court being an Environment and Land court under Article 162 (2) (b) of the Constitution must down its tools without pronouncing itself on any of the issues raised by the parties in line with the decision of the Court of Appeal in the celebrated case of *Owners of the Motor Vessel "Lilian" case -vs- Caltex Oil Kenya Ltd* (1989)KLR, where it was held that;

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. And a Court of Law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

It therefore follows that the orders of 2nd April, 2014 should not be allowed to remain in force and are vacated forthwith. The parties are directed to pursue their respective interests before the High Court, Busia where this suit is transferred to for hearing and determination.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 28TH DAY OF JANUARY, 2015.

IN THE PRESENCE OF;PRESENT 1ST PLAINTIFF

ABSENT 2ND PLAINTIFF

ABSENT 3RD PLAINTIFF

ABSENT DEFENDANT

ABSENT INTERESTED PARTY.

MR. MAKOKHA FOR PLAINTIFFS/RESPONDENT. AND INTERESTED PARTY

AND MR. OCHARO FOR DEFENDANT/APPLICANT.

JUDGE.