



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 148 OF 2011

MULTI-TRACK

CLESOI HOLDINGS LIMITED.....PLAINTIFF

VERSUS

PRIME BANK LIMITED.....DEFENDANT

R U L I N G

1. The Application before the Court is a **Notice of Motion** dated **5th November 2014** filed under Section 1A, 1B, 3A, 63 (e) and 80 of the Civil Procedure Act Cap 21 Laws of Kenya, Order 51 Rule 1.

2. The Application seeks the following orders:-

a. That this application be certified as urgent and the same be heard ex-parte in the first instance.

b. That pending the inter-partes hearing and determination of this application this honourable court be pleased to grant a temporary order of injunction restraining the Defendant whether by itself, its employees, servants, agents or auctioneers from doing any of the following acts that is to say from advertising for sale, selling whether by public auction or private treaty, disposing of or otherwise howsoever completing by conveyance or transfer of any sale concluded by auction or private treaty, leasing, letting, charging or otherwise howsoever interfering with the ownership or title to parcels of land known as Land Reference Numbers L.R. No. 209/10829/5.

c. That the honourable court be pleased to reinstate, re-issue or freshly issue the interlocutory orders granted on 15th March 2012.

d. That in the alternative to prayer 3 above, this honourable court be pleased to review or vary and vacate its order of 30th October 2014 lifting the interim orders granted on the 15th March 2014.

e. That cost of this application be provided for.

3. The Application is premised on the very many grounds set out therein and is supported by affidavit of **Nipti Rajesh Kumar** dated **5th November 2014**, and another affidavit of **Leonard Njenga** of the same date.

4. The brief history of the application is that the Plaintiff has by order of the Court been enjoying injunctive orders delivered on 15th March 2012. Since that time however, for various reasons the suit has been listed for hearing on at least six occasions between 12th October 2012 to 30th October 2014 without the hearing taking off. On 30th October 2014 when the matter was listed for hearing the Plaintiff's key witness was not in Court. the Plaintiff's lead counsel Mr. King'ara was said to be unwell, and so, Mr. Njenga, who held brief for Mr. King'ara applied for adjournment of the hearing. The application was opposed by Mr. Mwangi for the Defendant. The Court was not satisfied with the reasons advanced for the application for adjournment, but nonetheless, in the exercise of its inherent jurisdiction allowed the adjournment on conditions stated in the ruling. One of those conditions was that the injunction granted herein on 15th March 2012 was forthwith lifted.

5. It now appears that the Defendant has taken steps to realize the security which is the suit property and this is what has caused the Plaintiff/Applicant to file this application for the reinstatement of the said injunction issued on 15th March 2012.

6. I have perused the supporting affidavits of **Nipti Rajesh Kumar** and **Leonard Njenga**. The affidavits emphasise that the Plaintiff's key witness Nipti Rajesh was out of the Country and that Mr. Kingara his advocate was sick. They have pleaded for another chance so that the suit property may not be sold.

7. The application is opposed by a Replying affidavit of **Alka Shahi** who depones in his affidavit dated 28th November 2014 that he is the Chief Manager - Credit with the Defendant. In the said affidavit, Mr. Shahi emphasizes the delay in the hearing of the matter and that there is no sufficient evidence to support the application.

8. The parties counsel made brief oral submissions before the Court on 18th December 2014. I have carefully considered the application together with the Counsels submissions. I still take it that the Plaintiff did not provide good grounds to be absent in Court on 30th October 2014 since the date was taken prior to his travel abroad. Secondly, there is no reason why the Plaintiff's second witness was not in Court. So the lifting of the injunction order herein was proper.

9. But I have also heard the applicant's submissions that there have been at least six previous attempts of hearing and in some of those attempts the matter was taken out of the cause list by reasons not caused by the Plaintiff. I have also considered the ruling dated 15th March 2012 in which this Court saved the suit property from sale on the merit of the application. I think I need to reconsider the orders I issued on 30th October 2014 to enable the suit proceed to its conclusion without the threat of sale of the suit property hanging on the neck of the Plaintiff. I have taken this decision in the proper exercise of my discretion. I have also considered the assurance given to me in Mr. King'ara's submissions that the Plaintiff will take immediate steps to have this matter heard in the earliest time possible.

10. In the upshot, I make the following orders:-

a. The Plaintiff's Notice of Motion dated 5th November 2014 is allowed in its entirety.

b. The parties shall take a date for the hearing of the suit in Court today.

c. The Costs of this application shall be paid to the Defendant within 7 days.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 19TH DAY OF DECEMBER 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Miri holding brief for King'ara for the Plaintiff

Mwangi for the Defendant

Teresia – Court Clerk