



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
IN THE ENVIRONMENT & LAND COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 91 OF 2011

ERICK KIMINGICHI WAPANGANA MAGHARIBI MACHINERIES LTD.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED ANTIQUE AUCTIONEERS AGENCIES.....DEFENDANT

RULING

[1]. The respondents in this case filed a suit against the applicant and Antique Auctioneers Agencies and obtained an order in the following terms.

(a). “Pending the hearing and determination of this suit, the defendant, their servants, agents, be restrained by way of injunction from offering for sale or having any act to sale the plaintiff's immovable property namely E. Bukusu/S. Kanduyi/13584, E. Bukusu/S. Nalondo/2741 and E. Bukusu/S. Nalondo/2741.

(b). The first defendant/respondent do furnish a full account of the plaintiffs loan account with it.”

[2]. The order was issued on 12th October 2011 by the Deputy Registrar of the High Court at Bungoma. The appellants were aggrieved by the said order and filed a notice of appointment on 22nd July 2014 and a notice of motion dated 22nd July 2014. The motion prays that the injunction issued herein by the court on 12th October 2014 against the defendants herein be discharged, varied and or set aside.

[3]. The main grounds for setting aside being that the injunction has lapsed by operation of law and that the plaintiff is not paying the amount of loan due, and the amount continues to increase daily.

[4]. The 1st respondent on his part swore an affidavit replying to the motion filed by the applicants herein. He basically says that he was loaned Kshs. 7,800,000.00/=. He states that not all of it was disbursed for his business. That he was attached by the 2nd defendant who broke into his premises and attached his three vehicles and auctioned the same. He alleges he was not credited with that amount. He

avers that the court ordered that he be furnished with his account which has not been done.

[5]. The defendant in this case argue that they are not at present seeking for the suit to be dismissed, they are saying that the injunction has ceased to exist by operation of law. And that is what they are only at the moment interested in.

[6]. The injunction herein was issued by the court on 12th October 2011. The same has been in place for a period of 3 years one month.

Order 40 Rule 6 states;

Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.

[7]. The suit herein is still pending in court. The injunction granted herein was not extended and/or varied by the court prior to its expiry on 11th of October 2012. The same expired on that date. There has been no injunction from 12th October 2012.

[8]. The court is being asked to declare that which is clearly set out by order 40 rule 6. I need not say more on this application. I cannot discharge or set aside that which is not in existence.

[9]. In the final analysis, I state that there is no injunction in this matter at all. The applicants application succeeds only to that extent. Otherwise the applicants application, its filing and the orders it seeks cannot be granted for the reason that there is no injunction in the first place.

Each party shall bear their own costs.

Dated and delivered this 16th day of December 2014.

S. MUKUNYA

JUDGE.