



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. 73 OF 2013

LOISE MUMBI KAHIU.....1ST PLAINTIFF/APPLICANT

JENIFFER WAIRIMU KAHIU..... 2ND PLAINTIFF/APPLICANT

VERSUS

CRAB AN GEORGE INVESTMENTS.....1ST DEFENDANT/RESPONDENT

KENYA COMMERCIAL.....2ND DEFENDANT/RESPONDENT

RULINGS

1. The Plaintiff's Notice of Motion application dated 14th March 2013 and filed on 15th March 2013 sought injunctive orders to restrain the 1st Defendant from accessing a sum of Kshs. 1,800,000/= in the 1st Defendant's Kenya Commercial Bank Account Number 1134662378 and to restrain the 2nd Defendant from releasing said monies to the 1st Defendant pending the hearing and determination of the suit herein.
2. The Plaintiff also sought a mandatory injunction to compel the 2nd Defendant to countermand Bankers Cheque numbers 142170, 142169 & 142716 and restore the funds in the said bank account.
3. The 1st Defendant's counsel attended court on 2nd May 2013 and requested the court to mention the matter on 9th May 2013 with a view to recording a consent judgment but on 9th May 2013, in the absence of a consent judgment, the court directed the 1st Defendant to file its Replying Affidavit and that the parties do file their respective written submissions. The matter was fixed for mention on 21st June 2013.
4. On that day, neither did counsel for the 1st Defendant did not attend court nor the 1st Defendant file its Replying Affidavit and written submissions as had been ordered by the court. The 2nd Defendant informed the court that it was not filing any papers as the application was essentially between the Plaintiffs and the 1st Defendant. The Plaintiff filed their written submissions on 18th June 2013. The court therefore reserved its ruling which was to be delivered on notice.
5. According to the facts of this case and the written submission by the Plaintiff, the 1st Defendant failed, ignored and/or refused to deliver to the 2nd Plaintiff 1,500 bags of white maize in 90 Kg bags. The Sale Agreement dated 25th February 2013 was signed between the 1st Plaintiff on behalf of the 2nd Plaintiff and the 1st Defendant. The said agreement was annexed to the Supporting Affidavit of Loise Mumbi Kahiu, who is the 1st Plaintiff herein, sworn on 15th March 2013.

6. The court agrees with the Plaintiff's counsel that their application was unopposed. Although the 1st Defendant appeared in court on 9th May 2013, it does not appear to have been keen in countering the allegations by the Plaintiffs. Its advocate also informed the court that it was considering recording a consent judgment.
7. The court noted that the Plaintiffs did not attach copied of the cases of **Geilla Vs. CAssman Brown & Co (1973) E.A. 358 & Magnate Venture Ltd vs Eng. Kenya Ltd (2009) KLR.**
8. Be that as it may, the court is of the view that it would be in the best interests of justice to grant a mandatory injunction as opposed to granting restraining orders as had been sought by the Plaintiffs bearing in mind the overriding principles of facilitating an expeditious disposal of matter.
9. In arriving at the said conclusion, the court has had due regard to the case of **Kenya Breweries Ltd Vs. Okeyo [2002] 1 E.A 109** where the court held as follows:-

“ A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought the matter sought to be decided at once or where the injunction was directed at a simple summary act which could be easily remedied.”

10. In the absence of any facts by the 1st Defendant to rebut the Plaintiff's claim, it is evident that this is a clear case where the court can issue a mandatory injunction. It would be a waste of judicial time to deny the Plaintiffs access to the monies in the aforesaid bank account belonging to the Plaintiff and proceeding to full trial.
11. The upshot of this ruling is that the court hereby grants Prayer No. 6 of the Notice of Motion application dated 14th March 2013. The Plaintiffs costs of this application will be borne by the 1st Defendant.
12. Orders accordingly.

DATED and DELIVERED at NAIROBI this 20th day of September 2013

J. KAMAU

JUDGE