



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 142 OF 2011

MANGO VILLAS LTD.PLAINTIFF

VERSUS

MUMFORD RICHARD JOHNDEFENDANT

RULING

By way of a Notice of Motion application dated 18th November, 2010 and brought under section 1A, 1B, 3A and order 40 rule 1 and order 51 rule 1 of the Civil Procedures, the applicant seeks several orders.

1. A temporary injunction restraining the Defendant acting by himself or through his agent in any manner interfering with the plaintiffs company assets pending the hearing and determination of the suit.
2. That all rents collected from the plaintiffs company premises or any moneys received by the managing agents be paid to the plaintiffs Advocate who shall hold the same as stakeholders for the plaintiff company pending the hearing and determination of the suit.

The grounds are that the Directors of the plaintiff were a man and his girlfriend who intended to get married but the marriage was frustrated.

Secondly, that the Applicant was the sole owner of the property which was her only source of income.

That out of love and cohabitation with the Defendant she agreed to transfer her property to the plaintiff company for nominal consideration.

Further the intention of forming the company was frustrated by failure to get married.

That the funds from the plaintiffs company are the only source of income but the Defendant had ordered all rents to be paid directly to him.

In his replying affidavit the Defendant contends that the plaintiff company was incorporated on the

5th day of June 2002 and it continues to be managed on the basis of the memorandum and articles of association.

Further that in the year 2006 he purchased a parcel of land known as plot No. 1 Chaani but had it registered in the name of Rebecca Achiceng Okello.

That Rebecca Achieng Okello was made a joint shareholder and Director of the Plaintiff company so as to comply with the law.

That through abate agreement dated 23rd August, 2007 the said Rebecca Achieng Okello transferred to the plaintiff company the said parcel of and and vide a Directors resolution dated 21st September, 2007 the plaintiff company took possession of the suit land and outlined the share distribution between the Directors as Rebecca Achieng 10 shares and the Defendant 90 shares.

That on 26th September, 2007 the Directors by the plaintiff company passed another resolution where the defendant advanced to the company a loan in the sum of Ksh. 10,225,500/= to develop structures on the suit land.

The loan was interest free and was to be settled by the plaintiffs company from the rental income till full payment. Further that to date the plaintiff company has not cleared the said debt which still stands in the sum of Ksh. 10,225,050/=

The Defendant further contends that the activities sought to be prevented are right that are available to the Defendant pursuant to his ownership of the 90% shares and the loan he has granted the company.

The general principles for the grant of injunctions were enunciated in the celebrated case of **Giella – Vs- Cassman Brown & Co. Ltd. 1973 EA 358** where it was held,

“The conditions for the grant of an interlocutory injunction are now well settled in East Africa.

(a) an applicant must show a prima facie case with a possibility of success.

(b) an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

(c) if the court is in doubt, it will decide an application on the balance of convenience”.

The main prayers sought in the application are conservatory orders to preserve the first plaintiff assets and secondly an order for the rental income to be paid to the applicants Advocates pending hearing and determination of the suit.

As can be gleaned from the evidence adduced by way of affidavits, a friendship had blossomed between the Defendant and the 2nd plaintiff Rebecca Achieng Okello which eventually resulted in the formation and incorporation of a company going by the name of Mango Villas Limited.

At this stage of proceedings this court has to restrain itself from making determination of the issues as this should await the full hearing, as to whether a prima facie case has been made out, there is evidence which is not controverted that the Defendant did advance a loan of Ksh. 10,225,050/= to the first plaintiff which loan has not been settled to date.

The settlement of the loan was premised on the rental income which the applicant now wants to be paid to her Advocate.

It is noted that the 2nd plaintiff did file a further affidavit in contravention of order 51 rule 14(3) of

the Civil Procedure Rules which affidavit alleges forgery of documents. Having filed same without leave of the Court as required by law, its contents are disregarded for the purposes of this application.

The rental income is a sum that can be liquidated. This therefore can be compensated by way of damages.

The application has no merit and it is dismissed with costs.

Ruling delivered dated and signed this 28th day of October, 2013.

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M. MUYA

JUDGE

28TH OCTOBER, 2013

In the presence of:-

Learned Counsel for the Plaintiff (absent)

Learned Counsel for the Defendant Ojode holding brief Maina

Njenga.

Court clerk Mr. Musundi.