



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 65 of 2011

WILLIAM NJIHIA KIMANI.....PLAINTIFF

VERSUS

EQUITY BANK LTD.....1ST DEFENDANT

JUSTUS MUNENE MUNYI.....2ND DEFENDANT

T. MAINA WAWERU T/A ANTIQUE AUCTIONEERS.....3RD DEFENDANT

RULING

By this application, the Applicant prays from the court an order of injunction restraining the Defendant/Respondent from selling or disposing off land parcel L.R. No. Dagoretti/Ruthimitu/776 pending the hearing and determination of this suit. The application is made by a Chamber Summons dated 1st September, 2011 and taken out under **Order 40 Rule 1(a)** of the **Civil Procedure Rules**, and **Section 3A** of the **Civil Procedure Act**.

It is supported by the Applicant's affidavit sworn on 1st September, 2011 and is based on the grounds that the Applicant's company has been repaying the amount lent to it by the defendant. The said company is intent on fully repaying any amount lent to it together with interest thereon, and the Applicant is ready and willing to abide by any terms and conditions that may be set by the court as a precondition to being granted the prayers sought.

In opposition to the application, the 1st Respondent filed a replying affidavit sworn by Purity Kinyanjui, the Head of its Debt Recovery Unit, on 9th September, 2011. After considering the pleadings and the submissions of the respective counsel, I note that this application is very similar the one dated 1st March, 2011 which was heard and dismissed by this court on 28th July, 2011. The property in question has since then been sold, and the attempts by the Applicant to block any sale are belated.

In any event, in grounds 6, 7 and 8 of those on which the application is premised, the Applicant pleads that he has been repaying the loan lent to him by the 1st Respondent and intends to clear any outstanding balance. This is a clear admission that he still owes money to the 1st Respondent. Upon such an admission, he has not established a prima facie case with a probability of success as a pre requisite for the grant of an interlocutory injunction as required in **GIELLA v CASSMAN BROWN & CO. LTD [1973] EA, 358.**

It is also futile for the Applicant to plead that he is ready and willing to abide by any terms and conditions that may be set by the court as a precondition to being granted the prayers sought. Such a plea should have been made to the 1st Respondent in the first instance. The court does not make or impose contracts for litigants. It only interprets such contracts as have been entered into by litigants. As Scrutton L.J said in **BROWN v ABRASIVE WHEEL CO. [1927] KB**, it is not the business of the court to run the affairs of companies. That is best left to shareholders and heir directors.

In sum, I don't find a shred of merit in this application. It is accordingly dismissed with costs.

Orders accordingly.

L. NJAGI
JUDGE

DATED and DELIVERED at NAIROBI this 21st day of November, 2012

MUTAVA
JUDGE