



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**COMMERCIAL & TAX DIVISION – MILIMANI**  
**CIVIL CASE NO.343 OF 2010**

**CFC STANBIC BANK LIMITED ..... PLAINTIFF**

**VERSUS**

**TEDDY ODHIAMBO ULALO ..... 1<sup>ST</sup> DEFENDANT**

**JOHN GICHUHI NDIRANGU ..... 2<sup>ND</sup> DEFENDANT**

**R U L I N G**

The application before the Court is brought by a Chamber Summons dated 20<sup>th</sup> May, 2010 and taken out under **Sections 1A, 1B and 3A of the Civil Procedure Act; Order XXXIX Rules 1 and 9 of the Civil Procedure Rules**; and all other enabling provisions of the law. The Plaintiff/Applicant prays from the Court the following orders –

1. ***That a temporary injunction do issue freezing the 1<sup>st</sup> Defendant's Bank Account No. 241 785 971 with the Kipande House Branch of Kenya Commercial Bank Ltd., and restraining the 1<sup>st</sup> Defendant from demanding payment of Kshs.9,634,153.15 from his bankers or any other party pending the hearing and determination of this application.***
2. ***A temporary injunction do issue freezing the 1<sup>st</sup> Defendant's Bank Account No. 241 785 971 with the Kipande House Branch of the Kenya Commercial Bank Ltd., and restraining the 1<sup>st</sup> Defendant from demanding payment of Kshs.9,634,153.15 from his bankers or any other party pending the hearing and determination of this suit.***
3. ***Any other relief the Court deems fit in the interest of justice.***
4. ***The costs of this application be the Plaintiff's in any event.***

The application is supported by the annexed affidavit of Alfred Mugambi, the Applicant's Company Secretary and Head of its Legal Affairs Division, and is based on the following grounds –

1. ***The Plaintiff has a case for the orders sought that is clearly strong on the merits and has overwhelming chances of success in that -***

1. On 13<sup>th</sup> October, 2006, Kshs.9,634,153.15 was credited into the 1<sup>st</sup> Defendant's Bank Account Number from the Plaintiff's internal suspense account.
2. The Plaintiff's case is that the 2<sup>nd</sup> Defendant, who was an accomplice of the 1<sup>st</sup> Defendant, while employed by the Plaintiff, caused the aforesaid credit without any lawful authority or basis.
3. The Plaintiff's case is further and/or in the alternative that there was no supporting or underlying transaction against which the aforesaid credit was made.
4. There was no payment due to the 1<sup>st</sup> Defendant from the Plaintiff at the time his account was credited as aforesaid as he never held any account with the Plaintiff.
5. There was also no payment by any 3<sup>rd</sup> party in favour of the 1<sup>st</sup> Defendant through his above-mentioned account against which the aforesaid credit was made in his account.
6. The Plaintiff's case is therefore that the 1<sup>st</sup> Defendant is not entitled to make any demand for the sum of Kshs.9,634,153.15 from his Bankers.

**(b) The 1<sup>st</sup> Defendant has made demand upon his Bankers, Kenya Commercial Bank Ltd., who may be served with an order from the Criminal Case for payment of the sum of Kshs.9,634,153.15, which said sum was repaid to the Plaintiff.**

**(c) If the money is credited back to the 1<sup>st</sup> Defendant's account, the Plaintiff will be forced to refund the sum to Kenya Commercial Bank and will therefore suffer irreparable loss that cannot be compensated in damages as the Defendant's means are unknown.**

**(d) There has been an element of fraud by the Defendants which will further be perpetuated if the orders sought are not granted.**

**(e) If this suit ultimately succeeds in a situation where the orders sought herein were not granted, the result will have been futility in the course of justice.**

**(f) The balance of convenience is in favour of grant of the prayers sought.**

**(g) It is therefore in the interest of justice that the prayers sought be granted.**

Although the application seems to seek restraining orders against the 1<sup>st</sup> Defendant alone, both Defendants filed their respective affidavits of service. In his replying affidavit, the 1<sup>st</sup> Defendant insists that the money which was credited into his account was credited by his sister towards the purchasing of property for and on her behalf. The property was to be bought at a consideration of Kshs.6,100,000.00 thereby leaving a balance of about Kshs.3 million in the 1<sup>st</sup> Defendant's account to be applied as per instructions from his sister on another project that was being undertaken. The money in his account is therefore rightly his money and the Applicant is not entitled to lay any claim on it.

I have considered the pleadings and submissions of the respective parties. In order to be entitled to an interlocutory injunction, an Applicant has to demonstrate a *prima facie* case with a probability of success. Secondly, such an injunction will not be granted unless the Applicant might otherwise suffer irreparable injury. Thirdly, when the Court is in doubt, it will decide the application on the balance of convenience. These principles were clearly articulated in **GIELLA v. CASSMAN BROWN & CO. LTD. [1973] E.A. 358.**

On the basis of the statements of the record, I find that on 13<sup>th</sup> October, 2006, an amount of Kshs.9,634,153.15 was remitted to the 1<sup>st</sup> Defendant's account at Kipande House Branch of the Kenya Commercial Bank. It is not contested that the 1<sup>st</sup> Defendant did not have an account with the Plaintiff Bank, yet the money that was wired to the 1<sup>st</sup> Defendant's account originated from the Plaintiff's suspense account. Three days later, that is on 16<sup>th</sup> October, 2006, the 1<sup>st</sup> Defendant drew a cheque for Kshs.6,100,000.00 in favour of the 2<sup>nd</sup> Defendant who was also a customer at Kipande House Branch of

the Kenya Commercial Bank. The 2<sup>nd</sup> Defendant was an employee of the Plaintiff Bank from where the funds in question originated. The suggestion by the 1<sup>st</sup> Defendant that the money was sent to his account by his sister does not hold water. If that had been the case, he would have given her name, address and her Bank Account Number. But he provided none of these particulars. In the circumstances, having demonstrated that the said money originated from their suspense account, the Plaintiff has established a *prima facie* case with a probability of success, which satisfies the first condition for the grant of an interlocutory injunction.

The second issue is whether the Plaintiff might suffer irreparable injury if the injunction is not granted. The amount in question is a fairly large amount of more than Kshs.9,000,000/=. In the event that the injunction is not granted, and the 1<sup>st</sup> Defendant withdraws that money, it is not certain that he will be able to refund it if judgment is entered in the Plaintiff's favour as his means are uncertain. The Plaintiff might therefore suffer irreparable damage in the absence of such an injunction. Thirdly, if the Court is in doubt, it has to make a decision on the balance of convenience. The convenience in this matter dictates that the money be kept in safe custody pending the hearing and finalization of this case so that whoever wins will have ready access to all the money.

For the above reasons, I find that the Plaintiff has satisfied the conditions for the grant of an interlocutory injunction and prayer (3) of the application by Chamber Summons dated 20<sup>th</sup> May, 2010 is hereby granted as prayed. Costs in the cause.

Orders accordingly.

**DATED** and **DELIVERED** at **NAIROBI** this 20<sup>th</sup> day of January, 2011.

**L. NJAGI**

**JUDGE**