



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 752 of 2009**

**LAPORTE HOLDINGS LTD.....PLAINTIFF**

**VERSUS**

**EQUITY BANK LTD.....DEFENDANT**

**RULING**

Chamber Summons dated 8/10/2009 brought under Order 39 Civil Procedure Code seeking interlocutory injunction against the defendant pending the hearing and determination of this suit from selling or disposing off land parcel No.LR209/11296/44 and order for costs is prayed for.

The grounds upon which application is based is on the application and it is supported by affidavit of Symon Wachira Mwaniki. It is stated that the defendant has breached financing agreement with the plaintiffs by diverting part of loan proceeds. The defendant owes the plaintiff substantial damages as a result of the said breach and the defendant has unlawfully debited the first plaintiff's account with unlawful deductions and the plaintiffs' claim has good chances of succeeding and therefore the sale of the charged property would occasion irreparable loss and damage. It is sworn that plaintiffs and one Peter Githinji agreed to go into a joint flower growing business (the project) which project was to cost Kshs.3,500,000/=. The said project was to be implemented pursuant to an agreement between first plaintiff and a company based in Newzealand known as Plant and Floral Investment PTE Ltd.(Plant and Flora). The agreement is exhibited as "SWMI". Pursuant to agreement "SWMI" the letter was to purchase all the produce from the said project at an agreed price. The funds were to be borrowed from the defendants Kikuyu Branch where Ambiance was a customer. Defendant requested for financing agreement SWN2, proposal for financing SWM3, letter of guarantee by second plaintiff "SWM4". Security "SWM5" and the agreement between the first plaintiff and Plant Floral marked "SWM1". It was a condition that the funds would be disbursed through a joint account to be operated by first defendant and Ambiance. It was understood that the project was capital intensive and therefore full amount applied for was necessary for the successful implementation of the project and the funds would be disbursed in accordance with the proposal for financing.

The defendant approved the loan and therefore full amount applied for was necessary for the successful implementation of the project and the funds would be disbursed in accordance with the proposal for financing. The defendant approved the loan facility by letter dated 26/10/2007. The defendant breached the said agreement which was based on utmost good faith. The defendant failed to disburse the whole amount applied for and secured by legal charge over the aforesaid loan. Only a sum of Kshs.1,539,400/= through the joint account was availed. The defendant in collusion with Ambiance directed a sum of Kshs.1,960,600/= into the latter's account. As a result of the at diversion of the loan proceeds, the project collapsed. The amount lost in Kenya shillings amounts to Kshs.20,691,800/=. Furthermore on 11/8/2008 the defendant without authority debited the first plaintiff's account with Kshs.182,000/= allegedly owed to Peter Githinji. The plaintiff has repaid to the defendant a sum of Kshs.1,375,000/= and is claiming a further sum of Kshs.3,113,344.40. And the defendant threatens to sell the property.

The defendant has caused an affidavit to be sworn on its behalf by one Purity Kinjanjui who is described as Debt Recovery Manager. She swears that the first plaintiff has no cause of action against the defendant. Peter Githinji Wambugu borrowed the money from

the bank. The second plaintiff offered to give the security and executed a charge and guarantee by a letter dated 8/5/2008. The Ambiance litigation services to the defendant to the tune of Kshs.3,594,949.40 and a demand was made. The charge is registered under Land Titles Registry as LR209/11296/44. the notice served under the charge is by Antique Auction Ltd Notice to redeem property LR 209/1129/44 given under auctioneer for a period of 45 days from 2/9/2009. Statutory notice as provided under Transfer Of Property Act (TPA) is not served. It is only upon service Statutory Notice of sale can empower a chargee to sell the property charged without authority of the court.

As no such Notice is served or referred to, I therefore allow the application and grant injunction as prayed.

Orders accordingly.

Dated, signed and delivered at Nairobi this 11<sup>th</sup> day of December, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**