



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 4 of 2008

MARTIN NYAGA NJAGI.....PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYADEFENDANT

RULING

The plaintiff application sought an ex parte injunction under certificate of urgency. The ex parte order pending hearing inter partes has long expired in view of Order 39 rule 3 (2) However for unknown reasons the application has fixed the matter for hearing inter partes on 17/9/2008. This promoted the Applicant defendant to seek orders to discharge the ex parte order as provided under order 39 Rule 4.

Upon considering the argument of counsel and upon residing the Application and annexures, I am not satisfied the conditions laid down in the case of Cassmen Brown namely that the Applicant for interlocutory injunction must satisfy the court that he has a case with good chance of success and that the case is such that an award in damages cannot adequately compensate the Application and in case of doubt the court will apply the rule of convenience. From the proceedings the plaintiff has admitted the lending contract and his inability to service the loan in compliance with the terms of contract the court cannot interfere with contract entered in freely.

For the above I find that an interlocutory injunction cannot issue in favour of the plaintiff. I therefore discharge Ex parte order already expired. I also dismiss the plaintiff's interlocutory application dated 21/1/2008. All costs to the Respondent/Defendant.

It is so ordered.

Dated this 5th May, 2008.

J. N. KHAMINWA

JUDGE

5/5/2008

Khaminwa – Judge

Njue- Clerk

Mr. Maondo for Defendant/Applicant

Mr. Kenneth Githinji for Plaintiff/Respondent

Read in open court.

J. N. KHAMINWA

JUDGE