

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 151 of 2008

JOSEPH MAINA WERU

PLAINTIFF

Versus

MATHIRA FARMERS SACCO SOCIETY LIMITED..... DEFENDANT

RULING

The plaintiff has brought before court a chamber summons dated 6th November 2008. In that application the plaintiff seeks pending the hearing and determination of this suit to restrain the defendant from carrying on construction works or renovation on a premises known as Rhino House situated along Karatina Municipality being LR NO. KARATINA MUNICIPALITY/BLOCK 11B/403. The plaintiff describes himself as a registered Architect practicing in Nyeri and elsewhere in the Republic of Kenya. In this suit the plaintiff has sued the defendant alleging that the defendant terminated his appointment as a lead consultant in the defendant intended conversion of its premises into a banking hall. After the termination of his services he averred in the plaint that he had learnt that the defendant was using his architectural drawings. In his final prayers he sought a declaration that the defendant's termination of the contract was illegal and that the plaintiff is entitled to his full fees as per the provisions of The Architects and Quantity Surveyors Act Chapter 525. Further in those final prayers the plaintiff seeks an order barring the defendant from using his architectural drawings. As a back ground to the matter the plaintiff in his supporting affidavit stated that on 29th May 2008 he received a letter from the defendant requesting him to submit his quotation for consultancy services. He forwarded the same to the defendant and in June 2008 he held a meeting with the defendant's chairman and the management committee where they briefed him on the structure the defendant intended to put up. He was instructed to prepare a sketch design with preliminary estimates. He did so and also instructed a quantity surveyor to prepare the estimates. After forwarding those to the defendant he was again invited to attend a meeting to discuss those sketches. At that meeting he alleged that he was requested to omit the strong room and security system. He was later on presenting the preliminary estimates to be interviewed by the management committee of the defendant it was thereafter that he received a letter from the defendant appointing him as a lead consultant. On being appointed he prepared the final working drawings. He also instructed the quantity surveyor to prepare a bill of quantities. On forwarding these to the defendant he was informed that the defendant had changed his mind and now required a strong room to be provided for. He instructed the quantity surveyor to accordingly amend his bill of quantities to provide for the strong room. Those amendments he forwarded to the defendant on 20th August 2008. He was summoned by the defendant on 25th August 2008 when he informed the defendant management committee that he was in the process of finalizing the architectural drawings. It was agreed at that meeting that the defendant would proceed to tender for contractors. Whilst awaiting for that process to be completed the plaintiff received the defendant's letter dated 2nd September 2008 terminating his services. A week before filing the present application he noticed that there was work going on site. In his affidavit he stated:

“ that I highly suspect that the defendant who have my Architectural drawings and the Bill of Quantities are using the same to do the construction being done.”

According to him the lay out of the structures conforms to his drawings. He stated that if the defendant

was using his drawings his standing as an architect was in jeopardy if anything was to go wrong with the structure. That if the structure was to be hazardous he would be held liable and there was the danger of his name being removed from the register of architects. The application was opposed. The defendant filed a replying affidavit. The defendant in that affidavit began by drawing the courts attention to the plaintiff's claim in the plaint. It was argued that that claim sought a monetary award. That being so the defendant argued the orders sought by the plaintiff ought not to be granted. The defendant stated that there was no foundation to the plaintiff's fear that the defendant was using his drawing. The defendant attached drawings that had been prepared for it by Boslika Building Contractors. Those drawings had been approved by Karatina Municipal Council on 20th November 2008. At this point it is important to note that the plaintiff was of the view that the approval date was a date after the present application was filed. It was therefore argued that prior to that approval the defendant was using the plaintiff's drawings. In response the defendant's counsel stated that there were structures at the premises where the construction is to be carried out and it was those structures that were being demolished when the plaintiff first filed the application for injunction. The defendant thereafter began to show the reason behind the decision to terminate the plaintiff's services. The plaintiff prior to engagement had been requested to supply his profile or curriculum vitae but had failed to do so. That the plaintiff had failed to render adequate service to the defendant and was discourteous to the defendant officers. That there was doubt whether the plaintiff was qualified or that he was registered as an architect. It was denied that the defendant had requested the plaintiff to omit the strong room and security system. That rather it was the plaintiff through his own negligence that he omitted those vital items. That the plaintiff generally delayed the completion of assignments and that the preliminary estimates that were submitted were exaggerated. That the meeting of 25th August 2008 was called to give the defendant an opportunity to voice its complaint due to the plaintiff's delays.

I have considered the plaintiff's application. To begin with it is important to have in perspective the principles that should guide a court in granting of an interlocutory injunction. Those principles were well set out in *GIELLA VS CASSMAN BROWN & CO LTD. (1973) EA* as follows:-

“ -An applicant must show a prima facie case with a probability of success;

-An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury;

- When the court is in doubt, it will decide the application on a balance of convenience.”

The plaintiff's application is predicated on fear that if the defendant uses his drawing to construct a structure and if that structure is faulty the plaintiff will be held liable. What one gets from that argument is that the service of an architect can never be terminated.

The fourth schedule of Chapter 525 No. A3 provides:

“A.3 Termination of Engagement

(a) An engagement entered into between the architect and the client may be terminated at any time by either party on the expiry of reasonable notice, when the architect shall be entitled to remuneration in accordance with clause B.10 of this schedule.”

That clearly shows that the engagement of an architect can be terminated by either party and on such termination the architect is entitled to remuneration. Paragraph B10 of that schedule has provided that an architect is entitled to commensurate remuneration for the work done. The fear of the plaintiff having been responded to by the defendant in that the defendant was using other drawings to construct, it does become clear that the plaintiff had not shown a prima facie case with probability of success. The plaintiff has also failed to show that he will suffer irreparable injuries if the injunction is not granted. The injury that the plaintiff will suffer if at all is monetary. Such an injury cannot justify this court to grant the orders that are sought by the plaintiff. It therefore follows that the plaintiff has failed to prove to the court that he is entitled to the prayers sought. The chamber summons dated 6th November 2008 is hereby

dismissed with costs to the defendant.

Dated and delivered this 17th Day of December 2008.

MARY KASANGO

JUDGE