REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 635 of 2005

GEMSECURITIES EAST AFRICA LIMITED …….....……... PLAINTIFF

VERSUS

UZIMA PRESS LIMITED …….....…… DEFENDANT

RULING

In this application dated 26th May, 2005, and made under Order 39 Rules 1 and 2 of the Civil Procedure Rules, the applicant seeks to prevent a breach of contract by the defendant in selling the suit property (L. R. No. 1870/X/24) to a third party.

The applicant says that it has a valid contract with the respondent to purchase the suit property. According to a deposition filed on its behalf, the applicant alleges that the respondent (vendor) advertised the suit property for sale through its agent, Royal Property Ltd (hereinafter "Royal"). On 4th May, 2005 Royal offered the same to the Respondent for a price of Kshs.22 million, and asked that a 10% deposit be paid to the respondent's advocates, R M Mugo & Company. The respondent did exactly that. It issued a cheque for Kshs.2.2 million in favour of the advocate. However, the advocates rejected the cheque because, as the respondent says in its deposition, the applicant's offer had not been accepted, that the respondent's agent (Royal) had no authority to "accept" offers, that its only function was to receive offers for the respondent's consideration.

This is clearly a case where there are controversial issues. Was there a valid offer, and acceptance? Was there consideration? Did the agent have authority? These issues can only be addressed at trial, and not at this interlocutory stage. The only issue at this time is whether an interlocutory injunction should be issued to "prevent" a breach of contract.

Whether this court should do so is governed by the rules set forth in the well established case of ***Giella vs Cassman Brown & Co. Ltd (1973) E A 358*** where the Court of Appeal said:

"***The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience".***

Based on the facts before me, I cannot say with certainty that the applicant has demonstrated a prima facie case with a probability of success, and in any event I am satisfied that damages are an adequate remedy should the applicant eventually succeed.

The applicant has relied on the case of ***Muigai vs HFCK (HCCC No. 1678 of 2001)*** for the proposition that an interlocutory injunction may be granted in certain situations even where damages may be an appropriate remedy. I agree with my brother Ringera, J that indeed it is not an inexorable rule of law that an injunction should "never" issue where damages are appropriate. However, I believe, that for that to happen the applicant must show the intrinsic value of the land, some special characteristics or features of the suit land that distinguish it of such value or importance that damages would be an inadequate remedy. Here, there is no such thing. The only reason why the suit property is "important" to the applicant is that

it has “invested considerable resources … including Architects fees”. In my view, these are damages that can be easily calculated.

In the result, I must disallow this application, with costs to the respondent.

Dated and delivered at Nairobi this 22nd day of February, 2006.

ALNASHIR VISRAM

JUDGE