



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
Civil Case 562 of 2006

STANBIC BANK KENYA LIMITED..... PLAINTIFF

VERSUS

BERNARD OKOTH..... 1ST DEFENDANT

JOSEPH ODHIAMBO OBEL.....2ND DEFENDANT

JOBEL INVESTMENTS LIMITED3RD DEFENDANT

R U L I N G

The plaintiff has brought this Notice of Motion under Section 3A of the Civil Procedure Act, Order 5 Rule 17 Order 13 Rule 6, Order 50 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the Law. The principal orders sought are as follows:-

- 1) A mandatory injunction freezing the 3rd defendant's account No.227632337 at Kenya Commercial Bank Limited University Way Branch pending the determination of this suit.**
- 2) An Order that the sum of KShs.1,000,000.00 or any other sum held in the 3rd defendant's account No.227632337 with Kenya Commercial Bank's University Way Branch or any other account in the name of the 3rd defendant with the said bank be immediately transferred back to the plaintiff.**

The application which is supported by an affidavit sworn on 9.10.2006 by Brenda Aluoch an Advocate employed by the plaintiff is based on the following main grounds, namely:-

- 1) That the 1st and 2nd defendants were charged with 8 different counts of inter alia stealing the sum of KShs.13,262,617.70 from the plaintiff.**
- 2) That the 1st and 2nd defendants were found guilty of stealing Kshs.2,767,637.00 from the plaintiff on the count of stealing contrary to Section 275 of the Penal Code.**
- 3) That the 2nd defendant is the signatory to the account in the name of the 3rd defendant's account No.227632337 at Kenya Commercial Bank's University Way Branch where the plaintiff**

has traced the sum of about 1,000,000.00.

- 4) That in accordance with Section 47A of the Evidence Act the final judgment by the criminal court is conclusive evidence that the 1st and 2nd defendants are guilty of the criminal offences they were charged with.
- 5) That the 3rd defendant's account has been frozen by Kenya Commercial Bank Limited on its own motion following the request of the plaintiff as the proceeds of crime were credited there.
- 6) That it is important that a freezing order be granted to validate the continued freezing of the account at Kenya Commercial Bank Limited leading to the restitution of moneys due to the plaintiff.

When the application came up for inter partes hearing before me on 25.10.2006, the same proceeded ex-parte as there was no response to the same. The evidence contained in the supporting affidavit of Brenda Aluoch aforesaid reveals that the 1st defendant was an employee of the plaintiff in its clearing department. He was, together with the 2nd defendant, charged with 8 different counts of inter alia stealing the sum of KShs.13,262,617.70 from the plaintiff. A copy of the judgment is annexed as exhibit "BA I". The two were found guilty of stealing KShs.2,767,637.00. The evidence further shows that the 2nd defendant is a signatory of the account in the name of the 3rd defendant at Kenya Commercial Bank's University Way Branch where the plaintiff has traced a sum of about KShs.1,000,000.00. The Criminal Court also found that the stolen money was traced to the 3rd defendant's said account. Hence this application.

I have carefully looked at the affidavit evidence particularly the criminal judgment. I have also considered counsels submissions. Having done so, I am satisfied that the plaintiff has established a case for the temporary mandatory orders of injunction sought particularly in view of the fact that the said affidavit evidence is uncontroverted. Accordingly I will allow prayers 3, 4 and 8 of the application. Prayers 3 and 4 are granted on the condition that the plaintiff shall file an undertaking under its seal as to damages within the next 7 days.

For avoidance of doubt in the event that sums are transferred to the plaintiff in terms of prayer 4, the same are to be held by the plaintiff in an interest earning account pending the hearing of this suit.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2006.

F. AZANGALALA

JUDGE

10.11.2006

Read in the presence of:-