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

Civil Case 602 of 2006

PETER MWENDIA MUINAMI ……..…….....……..PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LIMITED…….……DEFENDANT

RULING

The Plaintiff moved by certificate of urgency in the Chamber Summons dated 3rd November, 2006. Before that Chamber Summons could be heard the Defendant raised a preliminary objection. Although in the Notice of preliminary objection filed in court on 6th November, 2006 the defendant had more than one objections when he appeared before court the Defendant raised the objection to this present suit on the basis that the Plaint does not pray for a permanent injunction to enable the Plaintiff seek an interlocutory injunction in the Chamber Summons. This, the Defendant argued was in contravention to Order XXXIX Rule 2 of the Civil Procedure Rules. It is important to note that before the Defendant's counsel raised that objection Plaintiff's counsel began to address the court on the need to amend the Plaint to include a prayer for permanent injunction. The court was of the view that leave to so amend was not required. Having that in mind that the Plaintiff had intimated his intention to amend the Plaint, the court would not be in a position to entertain the very objection which goes to root of that amendment. That as it may be the Plaint filed herein has indicated that the Plaintiff alleges that he did not sign the charge upon which the Defendant wishes to exercise its statutory power of sale. In other words the Plaintiff is not saying that there has been a breach of contract but is saying that there is no existence of such a contract and accordingly seeks to injunct the Defendant from selling the suit poetry. When one has that in mind it does seem that the Plaintiff's Chamber Summons is on Order XXXIX Rule 1(a) of the Civil Procedure Rules. In other words what the Plaintiff says is that there is a dispute over the suit property which is in danger of being wasted, damaged or alienated. That being the case there is no need for the Plaintiff to have a prayer for permanent injunction in the Plaint. For that reason the Defendant's objection is rejected and is dismissed with costs to the Plaintiff. Having reached that conclusion it is clear that the Plaintiff will be prejudiced that the delay in hearing of its application dated 3rd November, 2006. This is because the sale of the charged property is scheduled to be on 7th November, 2006 when this court will read this ruling. For that reason in the interest of justice the court will make further orders in that regard at the reading of this ruling.

MARY KASANGO

JUDGE

Dated and delivered this 7th day of November, 2006

MARY KASANGO

JUDGE