

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 720 of 2006

TOBIAS ODUKA T/A NEW JONNESCO ENTERPRISES APPELLANT

VERSUS

PAUL JUMA OKELO T/A JONNESCO ENTERPRISES RESPONDENT

RULING

In this application, brought under Order 41 Rule 4 (6) of the Civil Procedure Rules, the Applicant seeks orders to restrain the Respondent from trading in the name and style of “Jonnesco Services”, which he says is so identical or similar to his own firm, that it creates confusion in the minds of his customers. He also wants the Respondent stopped from unlawfully interfering in contracts with his customers, and more specifically from soliciting business or trading with the Applicant’s customers namely “MSF Belgium, MSF Switzerland, MSF Spain and CCF” until the hearing and determination of this appeal.

In his supporting affidavit he says the respondent is his ex-employee, and who has now set up a rival firm, and is taking business away from him. He deals in office supplies stationery, printing and photocopying services. The respondent deals in similar products.

What the Applicant is seeking are orders that would effectively stop the business of the Respondent. These orders are fairly drastic to grant at an interlocutory stage except in clear circumstances that the Respondent was actually deceiving the Applicant’s customers into believing that they were dealing with the Applicant’s firm. Clearly, there is no such evidence before this Court, and that is presumably why his application was denied in the lower Court.

The law governing the grant of injunctions is now fairly well settled with the decision in *Giella vs Cassman Brown (1973) E A 358*. The Applicant must show a prima facie case with a probability of success, and where the Court is in doubt it should decide the application on a balance of convenience. An interlocutory injunction will not normally be granted unless the Applicant is likely to suffer irreparable injury that would not adequately be compensated by an award of damages.

Now, based on the evidence presented to the Court, comprising mainly of quotations given to customers by the Applicant, I cannot say that the Applicant has demonstrated a prima facie case. In any event, if the Applicant is proved right eventually, he can be compensated in damages. I believe this is a case that is best determined by oral evidence, and it would not be appropriate to make interlocutory Orders. Such orders would be so drastic as to affect the Applicant’s named customers – effectively barring them from dealing with the Respondent if they so chose to – without even hearing them. Clearly that cannot be done.

Accordingly, I dismiss this application with costs.

Dated and delivered at Nairobi this 6th day of December, 2006.

ALNASHIR VISRAM

JUDGE