

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 139 OF 1997

GULFSTREAM TOURS HOTELPLAINTIFF

VERSUS

DEVELOPMENT FINANCE CO-OP KENYA LTD.DEFENDANT

RULING

I dismissed this application with costs on 11th April, 2002 and promised to give reasons for my order on 24th April 2002, which I now do.

The application by notice of motion was for this court to discharge its own order of 22nd September 1997.

The order of 22nd September 1997 arose from the application for injunction and discharge of receivership filed in court on 22nd January 1997.

The order of injunction therein was intended to injunct the respondent from selling the plaintiff's property otherwise known as L.R. No. Kisumu Municipality/Block 10/127 by public auction until the hearing and determination of the pending suit.

It was also intended to injunct the defendants from further holding onto the suit property and hotel business under receivership and to direct the defendants to lift the said receivership and put the plaintiff into possession thereof pending the hearing and determination of this suit.

Submissions on this application were made before this court on 8th September, 1997 by counsel for both parties and a ruling made thereon granting the order of injunction 22nd September, 1997.

In the present application, this court was told that since the appeal court case had been determined, this court should discharge its said order so that the defendant can realize its security because the plaintiff is not repaying the loan which had accumulated to Kshs.31,604,594/28 and which continues to attract interest.

According to the applicant's counsel, the ruling of this court of 22nd September 1997 did not depend on the hearing and determination of this case.

Counsel for the plaintiff opposed this application and said since the decision of the court of appeal he had taken steps towards the hearing of the suit by filing and serving list of documents.

My view of this application is that it has no merit. The spirit of the application dated 23rd January 1997 is that an injunction order should be made to remain inforce until the hearing and determination of this suit. It should be accomplished.

Nowhere does it say the injunction was intended to remain inforce until the hearing and determination of the court of appeal case.

I think parties should move fast and take steps to fix this suit for hearing rather than waste their and the court's time with these, otherwise useless intervening applications.

This is why I dismissed this application with costs on 11th April, 2002.

Dated this 24th day of April, 2002.

D.K.S. AGANYANYA

JUDGE