



1. Order 39 rule 1, 2, and 2A Section 3A
2. Prayer for an Injunction to issue pending an intended appeal against court's judgment and after judgment has been delivered

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1416 OF 1995

JAMES K. MURIUKI & OTHERS PLAINTIFFS

VERSUS

GOODNEWS CHURCH OF AFRICA & OTHERSDEFENDANTS

R U L I N G

The application before me is for an injunction under Order 39 rule 2, 2, and 2A Civil Procedure Rules pending an appeal to the Court of Appeal.

Order 39 rule 2 was awarded by Legal Notice 36/2000 to read:-

“In any suit for restraining the defendant from committing a breach of contract or other injury of any head whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of a like kind arising one of the same contract or relating to the same property or right”.

“2A (1) The court may by order grant under injunction on such terms as to inquiry as to damages the donation of injunction, keeping an account, giving security or otherwise as the court thinks fit.”

On the 20th of November 2000 I delivered judgment in favour of the defendants in this case by dismissing the plaintiff's claims. The plaintiff's sort an injunction against the defendants from:-

- a) alienating transferring selling or dispossessing and interfering with Plot No. 36/VII/586 Eastleigh Nairobi.
- b) an injunction from interfering with the plaintiff's quite employment of a church, nursery school and the area Sunday thereby and or evicting them from the suit premises.
- c) a declaration that the transfer of the premises to the trustees was irregular
- d) The transfer was unconstitutional
- e) The Commissioner of Lands be ordered to cancel the transfer and registration of titles.

f) General damages

g) Costs

h) Any orders as the court deems fit.

The plaintiff's being dissatisfied with the court's decision of dismissing all the above claims, filed this application whereby dated the 22.11.2000 praying that the court issue the same injunction that was dismissed in the plaint.

The matter was not prosecuted immediately as the parties thought they would reach an amicable solution. This was not forthcoming and on the 12.2.2001 the plaintiffs argued their application.

The gist of their arguments is that the court can issue an injunction after judgment and therefore this should be done. The reasons being that the plaintiffs have appealed against the court's decision to the Court of Appeal.

Then the advocate for the defendants strongly objected to the application stating that there has been no notice of appeal filed since the judgment had been delivered.

Nonetheless, there ought to be, he argued, an application for stay of execution together with this one.

I believe the advocate for the plaintiff should have filed an application under Order 44 rule 4 of the Civil Procedure Rules.

In principal no appeal can operate as a stay but the court for sufficient reasons may order a stay.

Under order 44 rule 6 it states that:-

“notwithstanding anything contained in sub-rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction or such terms as it thinks just provided the procedure of instituting an appeal from a subordinate court or tribunal has been complied with.”

It seems that this would have perhaps been the correct rule to have read instead of Order 39 rule 2 Civil Procedure Rules.

I find that I had dismissed this suit for the same prayers sought under Order 39 rule 2 Civil Procedure Rules, inter alia. That I hereby cannot reinstate my orders by issuing yet again another injunction. This would defeat the purposes of the judgment.

I hereby decline to make orders for an injunction after judgment.

I dismiss the application with costs to the 1st defendant. the Attorney General was absent during the argument and I decline to award him costs.

Dated this 13th day of February, 2001 at Nairobi.

M.A. ANG'AWA

JUDGE