



REPUBLIC OF KENYA



**SMP Capital Limited v Odak (Miscellaneous Application E254 of 2022)
[2024] KEHC 3375 (KLR) (Commercial and Tax) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3375 (KLR)

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

MISCELLANEOUS APPLICATION E254 OF 2022

NW SIFUNA, J

MARCH 11, 2024

BETWEEN

SMP CAPITAL LIMITED PLAINTIFF

AND

GRONBERG ANDERSON OKECH ODAK DEFENDANT

RULING

1. The Plaintiff has in its Complaint dated 4th July 2022 and filed herein, merely described itself as a limited liability company carrying on business in within the Republic of Kenya. Whether by sheer inadvertence or design, it has in the Complaint not described the business it is engaged in, and whether or not it is duly licensed to engage in the same. It has further stated that it advanced to the Defendant five loans as follows:
 - a. Ksh 1,305,000= advanced in June 2015 at a flat interest rate of Ksh 495,000= (i.e a flat interest rate of 37% of the principal amount), repayable by 15th September 2015, within 3 months.
 - b. A loan of Ksh 1,300,000= advanced on 10th August 2015 at a flat interest of Ksh 200,000=, repayable by 30th September 2015 (i.e a flat interest of 15% of the principal amount, within less than 2 months).
 - c. A loan of Ksh 3,000,000= advanced on 15th June 2016, repayable by 13th September 2016 with a flat interest of Ksh 1,000,000= (i.e a flat interest rate of 30% of the principal amount, within 3 months).
 - d. A loan of Ksh 3,500,000= advanced on 15th June 2016 and repayable by 13th September 2016 with a flat interest of Ksh 1,200,000= (i.e a flat interest of 34% of the principal amount, payable within less than 3 months).



- e. A loan of Ksh 2,000,000= advanced on 15th November 2016 repayable by 31st December 2016 with a flat interest of 300,000= within less than 2 months.
2. The Defendant secured these loans with two motor vehicles (KBQ 002J Scania) and (KBR 876P Scania), as well as the title deed of a parcel of land known as Ngong/Ngong 58556 that was later by the agreement of both parties swapped with the title deed of another land parcel known as Ngong/Ngong/58555.
3. The Plaintiff's case in this suit is that the Defendant is in default and arrears on those loans, hence there is need for this Court to issue an interlocutory injunction to restrain the Defendant from disposing off, charging, transferring or in any way interfering with the title and ownership of the said parcel of land known as Ngong/Ngong/58555.
4. The Defendant filed a defence in which he has vehemently contested indebtedness. He has even challenged some of the loans and their agreements, stating that they are forgeries that he has even reported to the police for investigations.
5. The said Application for interlocutory injunction is the Notice of Motion dated 11th August 2022. The same though supported by a Supporting Affidavit, was vehemently opposed by the Defendant on similar grounds as the suit itself. The Application proceeded by way of written submissions which I have read and internalized.

Analysis and Determination.

6. For a grant of an injunction, this Court has under the principles of the celebrated East African case *Giella v Casman Brown* [1973] 358, to satisfy itself that the Applicant has a good case with high chances of success and that the harm or loss that the Applicant is likely to suffer if the injunction is not granted the Applicant, is one that cannot be adequately compensated by an award of damages; and that if in doubt of the above two conditions, then it should decide on a balance of convenience.
7. The Plaintiff having in the Plaint by sheer oversight or by design not stated whether it is a financial institution and whether or not it is licenced as a lending institution or to give loans to the public, this Court is not in a position at this moment to ascertain the Plaintiff's legal status, and even the legality of those transactions. Especially also that the Defendant has in opposing the Plaintiff's claim alluded to illegality, impropriety or criminality.
8. There is therefore need for this Court to ascertain these facts before it can be in a position to consider whether to grant the orders being sought in this Application. The issues the Plaintiff has raised in this suit, and those raised by the Defendant, are of such a serious nature that this court must interrogate them and take evidence on them before it can make a determination.
9. My preliminary assessment of the facts on record suggests that these transactions may be in the nature of shylock business. The rates of interest, the repayment period as well as the term over which the interest is payable, are a flag post for a much careful appraisal or evaluation of the facts of this suit.
10. In consequences, for the many questions and ambiguities in this suit, I find that this is not a proper case for a grant of the interlocutory orders the Plaintiff has sought in this Application. The Application is therefore for dismissal, and I hereby dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH 2024.

PROF (DR) NIXON SIFUNA

JUDGE

