



Mwey v African Banking Corporation Limited & another (Commercial Case 242 of 2016) [2023] KEHC 17520 (KLR) (Commercial and Tax) (19 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17520 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 242 OF 2016
DAS MAJANJA, J
MAY 19, 2023**

BETWEEN

KIPTALAM JOHN MWEY PLAINTIFF

AND

AFRICAN BANKING CORPORATION LIMITED 1ST DEFENDANT

BONIFACE RENJA ERAMBO T/A ZEST MOTORS 2ND DEFENDANT

RULING

1. On June 9, 2017, the court granted the Plaintiff an injunction restraining the Defendants from selling his property; Transzoia/kipsoen/148 in exercise of its statutory power of sale. The Defendants filed an application dated 17th June 2021 seeking to discharge the injunction and dismiss the suit for want of prosecution. I heard the application and allowed the Defendants' application to the extent that I discharged the injunction but declined to dismiss the suit for want of prosecution. I instead directed that the suit be fixed for hearing.
2. The Plaintiff has now moved the court by the application dated 14th April 2023 seeking an order that, "pending the hearing and determination of the suit the status quo relating to Title No. Trans Nzoia/ Kipsoen/148 be maintained." The application is supported by the Plaintiffs affidavit sworn on 14th April 2023 and opposed by the Defendant through the replying affidavit the 1st Defendant's officer, Kajuju Marete, sworn on 8th May 2023.
3. The Plaintiff states that it seeks an order of status quo on the ground that the 1st Defendant has taken steps to sell the suit property and if the sale proceeds, the suit will be rendered an academic exercise. It adds that it has raised serious allegations of fraud against the Defendants which it ought to be given an opportunity to ventilate. On its part, the 1st Defendant states that this court is functus officio once the



order dealt with the question of discharge of the interim orders. That the interim orders had in fact expired by operation of law and that because of the Plaintiff's own indolence the suit was dismissed.

4. The Plaintiff makes heavy weather of the fact that what it seeks is an order of status quo and that an order of status quo is different from the application injunction that was granted and which subsequently lapsed and were in fact discharged. The Plaintiff cites the case of The Chairman Business Premises Tribunal at Mombasa exp. Baobab Resort (MBSA) Limited MSA Misc. JR No. 26 of 2010 (UR) where the court suggested that an order of status quo is different from an injunction and that, "An order of status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint." In my view an order of status quo is an injunction issued without stating that is an injunction. This is because the order prevents any party from interfering with the status quo prevailing at the time the order is made. The Court of Appeal in *Esso Kenya Limited v Mark Makwata Okiya* Nrb Ca Civil Appeal No. 69 of 1991[1992] eKLR explained the purpose of an interim injunction as follows, "The principles underlining the granting or refusal of injunction are well settled in several decisions of the court. Where an injunction is granted, it will preserve or maintain the status quo of the subject matter pending the determination of the main issue before the court."
5. This suit is now fixed for hearing on May 30, 2023 and without belabouring this matter any further and to allow him a final chance to prosecute the suit I will grant an order of injunction and restrain the 1st defendant from selling the suit property Transzoia/kipsoen/148 only to enable him prosecute his suit on the said date otherwise its will lapse without further ado.
6. The plaintiff shall pay the 1st defendant Kshs. 50,000.00 for the prejudice and inconvenience cause by his lethargy in the matter.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY 2023.

D. S. MAJANJA

JUDGE

Court of Assistant: Mr M. Onyango

Mr Kipngeno instructed by Kipngeno and Associates Advocates for the Plaintiff.

Mr Kiplangat instructed by Oundo Muriuki and Company Advocates for the 1st Defendant.

