



Solfin Solutions Limited v Sidian Bank Limited (Civil Application E069 of 2022) [2023] KEHC 18226 (KLR) (8 May 2023) (Ruling)

Neutral citation: [2023] KEHC 18226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPLICATION E069 OF 2022**

DKN MAGARE, J

MAY 8, 2023

BETWEEN

SOLFIN SOLUTIONS LIMITED PLAINTIFF

AND

SIDIAN BANK LIMITED DEFENDANT

RULING

1. This Ruling herein in respect of the application dated 3/10/2022. The said Application was filed under Certificate of Urgency. Upon the interim orders and orders of status quo being issued, the urgency quickly evaporated.
2. The plaintiffs' Advocate ceased acting and served the plaintiff. However, despite indulgence they have not filed submissions despite a standing order to do so if they so wish.
3. The Application sought the following orders: -
 - a) Spent.
 - b) That pending hearing and deamination of this Application inter-partes, this Honourable Court be pleased to issue an Order staying the sale or disposal of Motor Vehicle Registration No. KHMA 662S which was taken away by the defendant through the Auctioneers known as Muniu Mungai (T/A. Nairobi Channels Auctioneers.
 - c) That pending hearing and deamination of this Application inter-partes, this honourable court be pleased to issue an Order staying the sale or disposal of Motor Vehicle Registration No. KHMA 662S which was taken away by the Defendant through the Auctioneers known as Muniu Mungai (T/A. Nairobi Channels Auctioneers, who drove it to an unknown destination on September 30, 2022, while acting under the instruction of the Defendant (Sidian Bank Ltd).



- d) That pending hearing and deamination of this Application inter-partes, this honourable court be pleased to issue an Order directing the defendant to temporarily return to the plaintiff the said Vehicle Registration Number, KHMA 662S and No. KHMA 664S to use and generate money to pay for the loan continuously, until this Application is heard and determined.
 - e) That upon hearing this Application inter-partes, this honourable court be pleased to issue an Order directing that the file in the Magistrate's Court in Mombasa CMCC Mombasa Miscellaneous Application No. E343 OF 2022, brought before this court and be heard alongside this Application.
 - f) That upon hearing this Application inter-partes, this honourable court be pleased to issue an Order directing that the defendant must produce the Loan Account balance on interests to the plaintiff on the remaining loan interests balance within at least 7 working days and to reconcile the accounts.
 - g) That upon hearing this Application inter-partes, this Honourable Court be pleased to issue an Order staying the execution of the *ex-parte* orders given by Hon. E. Muchoki on September 15, 2022, together with any such consequential orders.
 - h) That upon hearing this Application inter-partes, this Honourable Court be pleased to issue an Order staying the sale or disposal of Motor Vehicle Registration Numbers; KHMA 664S and KHMA 662S, pending the hearing and determination of the main case.
 - i) Costs be in the Cause.
4. The plaintiff/applicant in the Application stated that there was no proclamation before the motor vehicle were taken. Further there was no due process followed. The said motor vehicle were reportedly a source of livelihood for the plaintiff.
 5. He says there will be a miscarriage of justice if the said motor vehicle are sold. He does not however disclose that he is bad in arrears. He also says that there is a Misc. Application No. EB43 of 2022 where Muhiu Mungai T/A Nairobi Channels filed and got orders.
 6. The Application is not before me I have not issued any orders only the court that issued orders can get them aside.
 7. I have perused the Court file, and in particular the Plaint where the plaintiff applicant seeks the following orders: -
 - a) A declaration that the defendant failed to follow the process and the repossession was illegal.
 - b) An Order directing the defendant to return to the plaintiff the said motor Vehicle Registration Numbers KHMA 662S and No. KHMA 664S immediately.
 - c) An Order directed at the defendant to pay the plaintiff Kshs. 3,000,000/= per week from the date of filing the case until paid in full.
 - d) Cost of this suit together with interest thereon at court rates.
 - e) Such other orders as may be just and expedient to make in the circumstances of this suit.
 8. The prayers sought are within a law. The test for this Application is *pro* fold. The Application is of the nature of a mandatory injunction. For as mandatory injunction to issue, other than complying with the prerequisites in *Giella v Classman Brown* (1963) EA 358, where the following test must be passed in addition to a strongly compelling *prima facie* case and special situations.



9. It is not enough to have some of the pillars. All must be met sequentially as communicated by the Court of Appeal 43. The principles guiding the grant of interlocutory injunction are now well settled. Those principles were set out in *East African Industries v Trufoods* [1972] EA and *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR the court restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) Establish his case only at a *prima facie* level,
- (b) Demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially.

See *Kenya Commercial Finance Co Ltd v Afraha Education Society* [2001] Vol 1 EA 86. If the Applicant establishes a *prima facie* case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the Applicant’s claim may appear at that stage. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a *prima facie* case does not permit “leap –frogging” by the Applicant to injunction directly without crossing the other hurdles in between. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience would arise. The inconvenience to the Applicant if interlocutory injunction is refused would be balanced and compared with that of the respondent, if it is granted.”

10. Starting with *prima facie* case, I will consider the same before looking at the respondents reply. There is no *prima facie* case known in law shown by the plaintiff. It is irrelevant to proceed to the other grounds and to what the respondent is saying.
11. I therefore dismiss this application in limine with costs of Kshs. 22,500/= to the defendant.

Determination

12. I give the following orders: -
- a. The application dated 3/10/2022 is bereft of merit and is therefore dismissed in limine.
 - b. Costs of 20,500/= to the Respondent.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 8TH DAY OF MAY, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE



In the presence of:

Mr. Wafula for the Applicant

No appearance for the defendant.

Court Assistant - Firdaus

