



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 15 OF 2019

DEBORAH KARANJA.....PLAINTIFF

VERSUS

KENYA WOMEN MICROFINANCE BANK PLC.....1ST DEFENDANT

GARAM INVESTMENTS AUCTIONEERS.....2ND DEFENDANT

RULING

1. I will begin by setting out the well settled principles that a party must satisfy for the granting of an interlocutory injunction which were enunciated in the case **GEILLA VS. CASSMAN BROWN & COMPANY LIMITED (1973) EA 358**, thus:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

2. An interlocutory injunction order is issued by the court for the protection from damage of equitable rights and legal rights to property pending litigation. In exercising that jurisdiction the court does not determine legal rights but merely keeps the property in its actual condition until the legal title can be established.

3. The plaintiff **DEBORAH KARANJA NGUGI** (hereinafter **Deborah**) has sued **KENYA WOMEN MICROFINANCE BANK LIMITED** (hereinafter the Bank) seeking for various declarations all relating to the bank’s exercise of its Statutory power of sale, by public auction, of Deborah’s property Ruiru East 5/118. That property was charged to the Bank for financial facility granted to Deborah. Deborah seeks by this suit, amongst others, declaration that the Bank in exercising its power of sale failed to secure the best price for the property; that the Bank used valuations that were fatally defective; a declaration that continuance of charging interest on Deborah’s account is illegal; that the Bank should be compelled to close Deborah’s loan account; and that the court should award Deborah special damages of Ksh.13,250,000/=.

4. The Bank filed defence denying any wrong doing in the realisation of its security and further pleaded in its counter claim that after realising its security Deborah’s account had a debit balance of Kshs.4,741,041/= for which the Bank seeks judgment to be entered against Deborah.

5. Before me is Notice of Motion application dated 15th June, 2020. The prayer subsisting, in that application, for consideration is an injunction to restrain the Bank from continuing to applying, charging and/or continuing to apply or charge interest on Deborah’s loan account.

6. When one considers that prayer for injunction it becomes very clear that Deborah seeks final orders at an interlocutory stage. To grant the prayer to restrain the Bank from applying interest on Deborah’s loan account will be tantamount to granting the final prayers in Deborah’s plaint. The Court of Appeal in the case of **OLIVE MWIHAKI MUGENDA & ANOTHER VS. OKIYA OMTATA OKOITI & 4 OTHERS (2016) eKLR** had this to say on final orders at interlocutory stage:-

“Applying the decisions of this Court in VIVO ENERGY KENYA LIMITED -V- MALOBA PETROL STATION LIMITED & 3 OTHERS (2015) eKLR and STEPHEN KIPKEBUT T/A RIVERSIDE LODGE AND ROOMS -V- NAFTALI OGOLA (2009) eKLR it has often been stated that an order which results in granting of a major relief claimed in the suit ought not to be granted at an interlocutory stage...

Guided by the dicta of this Court in the decisions of VIVO ENERGY CASE (supra), we are convinced and satisfied that the learned judge erred in law in granting final orders at the interlocutory stage when the main Petition had not been heard.”

7. It follows that the prayer for injunction in Notice of Motion dated 15th June, 2020 is without merit and is dismissed.

8. In addition, my perusal of this matter led me to note that Deborah filed an amended plaint on 11th December, 2020 but failed to pay the requisite court fees for a claim of special damages of Kshs.13,250,000/=. The correct court filing fees for such a claim is Kshs.70,000/=. Deborah however only paid Kshs.75/=. It follows that until Deborah submits to this Court the correct court filing fee, her claim will be stayed. Although her claim will be stayed the bank can continue to pursue its counterclaim.

DISPOSITION

9. I grant the following orders:-

(a) Prayer (iii) in the Notice of Motion dated 15th June, 2020 is dismissed with costs.

(b) The amended plaint filed in court on 11th December, 2020 is hereby stayed until the plaintiff does pay to the court the correct filing fee of that plaint.

(c) The defendants are at liberty to proceed with their counter claim.

RULING DATED, SIGNED and DELIVERED at KIAMBU this 6th day of MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant.....Kevin

For the plaintiffMr. Michuki H/B Kinyanjui

For the defendants.....Mr. Mulanya

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE