



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 10 OF 2017

VIKRUT REREQUISITES LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

HG GROUP LIMITED1ST DEFENDANT/APPLICANT

THE HOUSING FINANCE FOUNDATION.....2ND DEFENDANT/APPLICANT

RULING

1. The subject application herein is dated 1st April 2019, brought under the provisions of Article 165(6) and (7) of the Constitution of Kenya 2010, Sections 6, 8 and 18(1) (b) of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules 2010, and all other enabling provisions of law.

2. The Applicants are seeking for orders as here below reproduced;

a. Pending the hearing and final determination of the application, an order of stay of proceedings and discharge of the injunction order issued in Nairobi CMCC No. 8895 of 2017 on 14th December 2017 restraining the Defendants herein from in any way executing the recovery process against the Plaintiff herein by way of sale of the moveable property known as Land Reference Number 209/9958/L.R. No. 38459) do issue;

b. The suit filed by the Plaintiff against the Defendants herein being Nairobi CMCC No. 8895 of 2017; Vikrut Prerequisites Limited vs Housing Finance Corporation & 3 Others in the Chief Magistrate's Court be withdrawn;

c. Any other order the court may deem fit to issue in the interest of justice;

d. The costs of the application be provided for.

3. The application is based on the grounds thereto and an affidavit sworn by Paul Wafula, an Advocate of the High court in the firm of; Walker Kontos & Company Advocates authorized to swear the affidavit on its behalf.

4. He deposed that, the Respondent filed the suit herein and the same has been fixed for hearing on 8th May 2019. That notwithstanding the same, the Respondent has simultaneously filed against the Applicants a suit; CMCC Number 8895 of 2017: *Vikrut Prerequisites Limited vs Housing Finance Corporation & 3 Others* in respect of the same subject matter, where an order of injunction has issued restraining the Applicants from inter alia exercising its statutory power of sale over the suit property.

5. The Applicants aver that the aforesaid orders issued by the Chief Magistrates Court in CMCC No. 8895 of 2017 expressly contradict orders issued by this court on 12th February 2019 where this court declined to grant injunctive orders sought by the Respondent. Further, that the Respondent is litigating the same dispute over the same subject matter in two different courts in gross abuse of the process of the court. That the Chief Magistrate's Court in CMCC 8895 of 2017 lacks pecuniary jurisdiction to adjudicate over the dispute involving the suit property herein which is worth Kshs. 220,000,000 and where the debt owed by the Respondent to the Applicants is Kshs. 396,711,038.80 as at 31st August 2018.

6. Therefore it is in the interest of justice that the suit in CMCC 8895 of 2017 be withdrawn and the injunctive orders issued therein discharged as the continued existence of CMCC 8895 of 2017 and the orders made therein are an abuse of the process of court and are likely

to prejudice and otherwise embarrass and/or delay the hearing of this suit.

7. On the 9th April 2019, the matter was heard inter parties, and the court gave directions to the effect that;

- a. Respondent file a response to the application within fourteen (14) days;
- b. The Applicant was given seven (7) days to file a further affidavit if need arose together with their submissions;
- c. The Respondent had seven (7) days of service within which to file their submissions

8. The matter was then stood over to 8th May 2019 for highlighting of submissions. However, on that date, the Respondent sought for extension of time within which to file and serve the response to the application. The reasons advanced for the same was that, the Respondent's director who was to give instructions was unwell, and when he got well his counsel, the learned counsel Mr. Mburu was out of town. The Respondent then sought for a further seven (7) days to comply.

9. However, the Applicants strongly opposed the application for adjournment, on the ground that the proceedings in the Chief Magistrate's Court were on-going and that, the Respondent had adequate time to respond to the application. After hearing the parties, the Respondent was granted time to 8th May 2019 to respond to the application and the Applicants were directed to avail documents to prove that, the matter in the Chief Magistrate's court was on-going.

10. I have considered the application, on the basis of the documents filed by the Applicant and in particular, the pleading in the Chief Magistrate's Court Case No. 8895 of 2017. I have also noted an order of injunction issued thereon on the 14th December 2017, and it is evident that, there are two parallel proceedings in the Chief Magistrate's Court and the High Court in relation to the subject matter herein and involving the same parties.

11. A further perusal of the pleadings in the Chief Magistrates Court Case, they reveal that, the proceedings in that matter commenced on or about 8th December 2017, as evidenced by a notice of motion application dated the same date and filed in court on 14th December 2017. By that time, the matter herein was on-going having been presented to the court on 1st January 2017. It is therefore clear that, the mater in the Chief Magistrate's court was filed after this matter. Therefore if any proceedings had to be stayed, then it is the proceedings in the Chief Magistrates Court.

12. The Applicants have sought that this court do discharge the order of injunction issued in the Chief Magistrate's proceedings, but an order can only be discharged within the court where it was given and there is no evidence that the parties have sought for the discharge of the same and that request has been declined. I therefore decline to grant that order.

13. Similarly, the Applicants have sought that, the court do issue an that the matter before the Chief Magistrates Court be withdrawn. The court finds that it has no jurisdiction for the same, and that application should be made in those proceedings.

14. However, based on the facts herein, I find that it is in the interest of justice that, I allow prayer (3) of the application in so far as it relates to the stay of proceedings in Nairobi CMCC No. 8895 of 2017 pending the hearing and determination of the suit herein.

15. The costs of this application shall abide the outcome of the main suit.

16. It is so ordered.

Dated, delivered and signed in an open court this 20th day of May 2019.

G.L.NZIOKA

JUDGE

In the presence of:

Ms. Nyakundi holding brief for Mr. Mburu for the Applicants

Ms. Abuya holding brief for Mr. Ogunde for the Respondent

DennisCourt Assistant