



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 79 OF 2019**

**MAWE MBILI LIMITED.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**JACQUELINE MACK DAMON.....DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff/applicant in this instance has brought forth the Notice of Motion dated 15<sup>th</sup> April, 2019 supported by the grounds set out on its body and the facts deponed in the affidavit of *Jean Francois Damon*. The applicant is seeking for the orders hereunder:

***(i) Spent.***

***(ii) Spent.***

***(iii) Spent.***

***(iv) Spent.***

***(v) THAT pending the hearing and determination of the suit, this Honourable Court be pleased to order that the defendant/respondent by herself, her servants, employees, agents or whosoever be restrained from interfering with the property of the plaintiff/applicant in any manner whatsoever pending the hearing and determination of the suit.***

***(vi) THAT the costs of the application be provided for.***

2. The application proceeded *ex parte*, this court having noted evidence of service upon the defendant/respondent, who subsequently did not enter appearance nor file any documents in reply thereto.

3. I have considered the grounds set out on the face of the Motion and the facts deponed in the affidavit filed in support.

4. It is clear that the application concerns itself with the granting of an interlocutory injunction. The principles on interlocutory injunctions were stated by the Court of Appeal of East Africa in *Giella v Cassman Brown & Co. Ltd (1973) EA* inter alia as follows:

***a) The applicant must first establish a prima facie case with a probability of success.***

***b) The applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.***

***c) Where there is doubt on the above, then the balance of convenience should tilt in favour of the applicant.***

5. As concerns the *first* principle on whether there exists a prima facie case, Jean Francois Damon; being one of the directors/shareholders of the applicant, stated in his affidavit that the respondent has been mismanaging the applicant company by making unilateral decisions in the absence of company resolutions approving such decisions, including arrogating herself as the applicant's managing director; firing and hiring employees and other company officials and terminating a lease agreement between the applicant and Delamere Estates Limited. The deponent has made reference to various annexures in support of his averments.

6. Further to the above, it is the deponent's assertion that the respondent has simultaneously interfered with and hindered him from participating in the management of the applicant company while continuing to unilaterally run the applicant and misappropriate its funds, to the detriment of the company.

7. This dispute appears to be that between directors and or shareholders of a company. However Jean Francois Damon has used the company to file this suit. He has not filed any company resolution authorizing the institution of such an action. The requirement is mandatory. In the absence of such a resolution, this suit is rendered incompetent. I am therefore not satisfied that the applicant has shown a prima facie case.

8. In respect to the second principle, the deponent states that owing to the termination of an agreement previously entered into between the applicant and the neighbouring communities with the aim of taking precautionary measures against fires, a fire broke out sometime in 2017 at Sleeping Warrior Lodge owned and ran by the applicant, thereby destroying a number of its facilities and account records.

9. The deponent further states that the applicant consequently lost its only source of income resulting from the fire. I am unable to see the nexus between fire break outs and mismanagement of the plaintiff company by the defendant. The applicant has failed to discharge the burden of proving irreparable damage.

10. In view of the foregoing, I am not satisfied that the applicant company has established the manner in which it stands to suffer irreparable loss.

11. In the end, I find no merit in the Motion dated 15.4.2019, the same is dismissed. Costs shall abide the outcome of the suit.

**Dated, signed and delivered at Nairobi this 20<sup>th</sup> day of September, 2019.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent