



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

MISC APPLICATION NO 545 OF 2016

JAMES EWATAN EKENO.....APPLICANT

VERSUS

EQUITY BANK (K) LTD.....RESPONDENT

RULING

INTRODUCTION

1. The Applicant's Notice of Motion application dated on 10th October 2016 and filed on 13th October 2016 was brought pursuant to the provisions of Order 33 and Section 3A of the Civil Procedure Act and all other enabling provisions of the law. The application sought the following prayers:-

- 1. THAT the Honourable court do certify this motion as urgent and dispense service in the first instance.**
- 2. THAT this Honourable court do grant leave to the applicant to institute suit as pauper.**
- 3. THAT costs be in the intended suit.**

THE APPLICANT'S CASE

2. The Applicant swore an Affidavit on 10th October 2016 in support of his present application. His Written Submissions were dated and filed on 5th April 2018.

3. His case was on 25th February 2015, the Respondent advanced to him a loan in the sum of Kshs 4,200,000/= to purchase Motor Vehicle No KBM 156P (hereinafter referred as "Subject Motor Vehicle"). He used the said Motor Vehicle for transport business.

4. The subject Motor Vehicle developed mechanical problems and he incurred a sum of Kshs 1,486,390/= for repairs, engine overhaul and car track installations. He sold his Toyota pick-up at a sum of Kshs 445,000/= to raise monies for the repairs. However, the said Motor Vehicle became grounded for five (5) months and he communicated the same to the Respondent's Credit Manager.

5. However, the Respondent repossessed the Motor Vehicle from the garage where it was to facilitate replacement of the engine and other defective parts. It was thus his contention that he had a good case against the Respondent but because he had no means to raise the sum of Kshs 70,000/= being assessed court filing fees for his claim against the Respondent, and hence his application seeking leave to institute proceedings herein as a pauper ought to be allowed. He attached a copy of letter from the Chief in his area indicating his dire financial status.

THE RESPONDENT'S CASE

6. In response to the said application, Hilda Mangele, the Respondent's Legal Officer swore a Replying Affidavit on 14th July 2017. The same was filed on 19th July 2017. The Respondent also filed a Notice of Intention to raise a Preliminary Objection also dated 14th July 2017 and filed on 19th July 2017. Its Written Submissions were dated and filed on 13th June 2018.

7. Its case was that the Applicant defaulted in repaying the loan it had advanced him and that he was not a pauper as he had intended to

portray himself because from the Bank statements running from 25th February 2015 to 1st August 2016, which were a month before he filed suit, it was clear that he could have raised the court filing fees of Kshs 70,000/= without a struggle. It averred that he had misled his Area Assistant Chief that he was a pauper as he had not disclosed his true financial status and consequently, there were no circumstances warranting the granting of the orders he had sought.

8. It therefore urged this court to dismiss the present application with costs to it.

LEGAL ANALYSIS

9. The Applicant submitted that he moved the Chief Magistrate's Court in **Miscellaneous Application No 372 of 2016** seeking leave to file suit as a pauper and that the Learned Trial Magistrate rejected his application on the basis that he operated several bank accounts and did not therefore fall under the class of a pauper.

10. He argued that this court had power to grant the orders he had sought by virtue of Article 159 (2) (a) of the Constitution of Kenya, 2010 and that the Respondent ought not to deny him access to justice on account of his financial status. He contended that his application ought to be allowed to enable each party present its case and the same be determined on merit.

11. On its part, the Respondent submitted that the Applicant was not a pauper. It referred this court to the definition of a pauper in the Oxford Dictionary:-

“As a very poor person” or “a recipient of relief under the provisions of the poor law or public charity”.

12. It also placed reliance on the case of **Benson Mbuchu Gichuki vs Norwegian Peoples Aid [2012] eKLR** which held that a pauper was a person who could not raise fees to file a suit or maintain appeal. In further support of its argument, it relied on the cases of **George M Ndirangu vs Kenya Revenue Authority & Another [2016] eKLR** and **Kelaine Kachiuki vs Misheck Ithalii & Another [2016] eKLR** where the courts dismissed applications where applicants had not proved that they were paupers.

13. This court carefully considered the Applicant's application and looked at the Bank Statements that were for a month before he filed suit. The same showed a bank balance of Kshs 1,994.90. This was by no means sufficient to pay filing fees in the sum of Kshs 70,000/=.

14. However, the Bank Statements, as a whole, did not portray a person who was so poor as to deserve charity from others. He may have fallen on hard times as is common in life but he could not by any means have been referred to as a pauper.

In any event, his claim of Kshs 9,000,000/= was well within the pecuniary jurisdiction of the Chief Magistrates Court Milimani Commercial Court where filing fees may well be lower than those in the High Court. Indeed, his claim need not have been filed in the High Court.

15. Accordingly, having considered the Affidavit evidence, the Written Submissions and the case law that was relied upon, this court came to the firm conclusion that the Applicant did not persuade it to find and hold that he was a pauper.

DISPOSITION

16. For the reasons foregoing, the upshot of this court's Ruling was that the Applicant's Notice of Motion application that was dated 10th October 2016 and filed on 13th October 2016 was not merited and the same is hereby dismissed with costs to the Respondent.

17. It is so ordered.

DATED and DELIVERED at NAIROBI this 19th day of September 2018

J. KAMAU

JUDGE