



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
HCCC NO. 659 OF 2015

WINNIE NJERI KARIUKI.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

R U L I N G

The plaintiff/Applicant moved the Court vide her Notice of Motion dated 16th December 2015 for orders that;

(1) Spent

(2) Spent

(3) An interlocutory injunction be issued pending the hearing and determination of this case, restraining the Defendant, Equity Bank Limited, from effecting the intended illegal loan deductions from her salary through her employer, the Teachers Service Commission through the check –off system.

(4) That the Court be pleased to issue an order to the defendant to immediately issue a stop order electronically advising the Plaintiff’s employer not to deduct any loan installment payments from her December 2015 salary on the basis of the new second and third loans until the matter is heard and determined.

(5) That the Court do make such order as it may deem fit and expedient pending the hearing and determination of this application.

(6) That costs of the application be provided for.

The Grounds relied on in support of the Application are that the Plaintiff, an employee of TSC and a customer of the Defendant, borrowed a loan of Kshs. 1,470,000 from the Defendant which was to be repaid through check- off system. The Plaintiff contends that she faithfully made the repayments to completion in October 2015, but that in November 2015, the Defendant loaded two additional sums of Kshs 1,076,724 and Kshs. 978,618 onto her payslip, which sums were unknown to the Plaintiff as she had never applied for or received any such loans. The Plaintiff therefore prays that the check-off deductions for the additional sums be discontinued forthwith pending the hearing and final determination of this suit.

The application was filed pursuant to Section 3A of the Civil Procedure Act and Order 40 Rules 1, 2, 3, 4 and 5 of the Civil Procedure Rules and was canvassed by way of written submissions. I have perused and considered the same and there appears to be no dispute that the Plaintiff/ Applicant was granted a loan in 2009 of Kshs. 1,470,000 that was to be repaid through check-off system, effected by the employer, TSC. Thereafter, in November 2015 the Defendant loaded additional sums after the full payment of the initial loan, contending that these were interests chargeable and recoverable from the Plaintiff in respect of sums lent to the plaintiff including a development loan of Kshs. 3,000,000 that was subsequently advanced to the plaintiff.

It is clear therefore that the issue in controversy herein is about the interest chargeable. It is now trite that a dispute over interest or accounts is no basis for granting an injunction. In **Fina Bank Ltd vs Ronak Ltd** the Court of Appeal held thus:

“ As the charge documents which were in evidence before the High Court expressly reserved, in favour of the Appellant, the right to charge interest at variable rates in its absolute and sole discretion, the contractual relationship between the parties could not be impeached merely because the exact rate or rates had not been specified. Accordingly, the Respondents had not made out a case for injunctive relief in their favour...”

In the premises, this being a dispute centred only on the aspect of interest and accounts, it would not be a suitable case for the grant of temporary injunction. Besides, the payments complained of are already being made and it has not been demonstrated that the Defendant/Respondent will not be in a position to refund the monies.

In the result, it is my finding that the principles for the grant of temporary injunction as set out in the case of GIELLA VS CASSMAN BROWN have not been established herein by the Plaintiff. Her application is therefore hereby dismissed with costs.

Dated, signed, and delivered at Nairobi this 1st day of July 2016.

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OLGA SEWE

JUDGE