



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 4 OF 2016

JIWEZE WOMEN DEVELOPMENT PROGRAMME.....PLAINTIFF

VERSUS

1. NON GOVERNMENTAL ORGANIZATIONS

COORDINATION BOARD.....1ST DEFENDANT

2. NATIONAL BANK OF KENYA LIMITED.....2ND DEFENDANT

3. K-REP BANK LIMITED.....3RD DEFENDANT

RULING

1. By a plaint dated 25th January 2016, the plaintiff sued the Defendants following a directive by the first defendant directed to the second and third defendants to freeze its accounts held by the two banks on account of an allegation of money laundering. It is the plaintiff's claim that the said directive and subsequent freeze of the accounts was malicious illegal and against rules of natural justice as it was not given an opportunity to state its case and as a result, the freeze has grounded its operations including its fifty(50) employees and over 10,000/= clientele causing them to suffer hardship. Together with the plaint, the plaintiff brought an application of even date seeking the following orders:

1. That this court be pleased to issue a mandatory injunction compelling the first defendant to recall and or cancel their request/directive dated 19th January 2016 addressed to the plaintiffs bankers M/S Bank of Africa Ltd, Nakuru Branch and K-Rep Bank Ltd.

2. That this Honourable court do issue a mandatory injunction compelling the second and third defendants to defreeze the accounts No.01021020860800 and 01004040008785 held by the plaintiff with the second and third defendants.

3. That pending the hearing and determination of this suit this court be pleased to issue an injunction restraining the first defendant by itself, its servants or agents or any other acting under it from requesting and or directing the second and third defendants to freeze account numbers 0800 143 009 and sub account numbers 0800 143 170 and 0800 143 0143 held at Bank of Africa Ltd Nakuru Branch.

2. The application is premised on the provisions of Order 40 Rules 1 and 2 of the Civil Procedure Rules and Section 1A, 1B and 3A of the Civil Procedure Act, together with grounds as appear on the face of the application.

The Chairperson of the plaintiff Philomena Njeri Mwaniki swore the supporting affidavit on the same date.

3. The applicant Jiweze Women Development Programme is a registered Non Governmental Organizations(NGO) and its operations include economic and social empowerment of the people in its areas of operations at Nakuru, Eldoret, Kabarnet Eldama Ravine and Naivasha. The said NGO operates bank Accounts at the National Bank of Kenya Limited and K-rep Bank Ltd and Bank of Africa Limited all at their Nakuru Branches.

On the 19th January 2016, pursuant to a directive issued by the first defendant the respondents froze the above accounts alleging money laundering by the applicant without giving them a hearing which it states has caused it hardship.

The chairperson of the applicant deposes that the said directive was based on ulterior motives that have no legal basis nor is there any legal authority emanating from the Non Governmental Organisation(NGO) Act for such directive and so is the second and third respondents action to close the accounts. She therefore prays for the orders to defreeze its accounts.

4. In its supplementary affidavit sworn by Elizabeth Wanjeri on the 4th February 2016, the treasurer of the Applicant deposes that the applicant was not able to access funds from the second respondent from the 25th January 2016 up to the 27th January 2016 when the Bank allowed it to transact the account and now seeks to have the suit against the said second Defendant, National Bank of Kenya Ltd withdrawn with each party bearing its costs.

5. On the 12th February 2016, the applicant and the third defendant executed a consent letter which was filed on the 16th February 2016 lifting the freeze of the applicants accounts with it – K-Rep Bank Ltd with each party bearing its costs. The second Respondent is not party to the arrangement.

6. I have considered the consent letter referred to above and the applicants confirmation that the second defendant had also lifted the freeze and allowed the applicant operate its accounts. To that extent, it appears that the dispute was amicably settled.

7. The second Defendant in its oral submissions by counsel sought that the suit be withdrawn against it with costs, which the applicant opposed stating that the suit and application were necessitated by the freeze of the accounts hence costs should not be awarded to the 2nd respondent as there were good and reasonable grounds to sue the respondents.

8. From the affidavits filed by the applicant and the respondents, it is evident that there were some audit questions that the first respondent needed to investigate on the Applicants Accounts. It did so by directing the second and third defendants to freeze the applicants accounts, but without giving them a chance to be heard. For a period of three days, the applicant could not access its accounts and it states that this caused it operational hardship.

The case against the third Defendant has been settled. The applicant is willing to withdraw the suit against the second defendant but the second defendant seeks costs of the suit. The first defendant seeks the application for injunction be denied. Considering counsel arguments, it is evident that the issues giving rise to the suit application have been settled. The plaintiffs accounts held in both the second and third defendant Bank are now operational. The freeze of the same no doubt caused the plaintiff hardship for three days. The second and third defendants were acting on directives as issued by the first Defendant who acted without notice to the plaintiff and without giving it a chance to be heard. This is against the cardinal rules of natural-justice leading to the filing of the suit and the application under review. Notwithstanding the second and third defendants willingness to have the suit and application withdrawn, and indeed the plaintiff/applicant has withdrawn its case against the third defendant, the second defendant has no objection to the case being withdrawn but with costs to itself.

9. Section 27 of the Civil Procedure Act grants the court discretion to award costs or not to depending on circumstances of each case. The plaintiff had reasonable grounds for suing the second defendant. For three days, it could not access its funds. The second defendant in its submissions states that it wrote to the plaintiff seeking withdrawal of the suit before it instructed its advocates to file court papers. That was ignored. Had a response been received, probably no reply to the application would have been filed. Further, no demand notice was served upon the second defendant before the suit was filed.

On the other hand, the second defendant froze the plaintiffs' account without notice. It inconvenienced the applicant for the three days.

10. For those reasons, the court finds that the second defendant is not entitled to costs of the suit. It is ordered that the plaintiff's suit is hereby withdrawn as against the second defendant with each party bearing its own costs of the suit.

11. The plaintiffs case and application against the first defendant has not been withdrawn. It shall be determined on its merits. In the meantime, the applicants application dated 25th January 2016 is allowed, to the extent that the first defendant is restrained by an order of mandatory injunction compelling it to recall and cancel their directive dated 19th January 2016 to the plaintiffs bankers M/S Bank of Africa, Nakuru Branch, Account Numbers 0800 143 009 and sub account numbers 0800 143 009 and sub account numbers 0800 143 170 and 0800 143 0143, pending the hearing and determination of the suit.

Each party shall bear its costs of the application.

Dated, signed and delivered in open court this 15th day of September 2016

JANET MULWA

JUDGE