



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 110 OF 2014

ALI HASSAN ALI.....PLAINTIFFS

V E R S U S

DIAMOND TRUST BANK KENYA LIMITED.....1ST DEFENDANT

J. M. GIKONYO T/A GARAM INVESTMENTS....2ND DEFENDANT

RULING

1. Plaintiff approached this Court *ex parte* with Notice of Motion dated 27th August 2014 seeking interim injunction to restrain the 1st Defendant from selling his property which he had charged to the 1st Defendant as security for a financial facility. On that day the Court granted the Plaintiff interim injunction for fourteen (14) days. That injunction was granted on condition that Plaintiff would deposit into Court Kshs. 500,000/-. That amount was deposited on 28th August 2014. The Court receipt shows that payment was made by the firm of Khatib & Company Advocates.
2. The matter was finally fixed for inter partes hearing on 25th November 2014. The firm of Khatib & Company Advocates had by that date filed a Notice of Motion dated 27th October 2014 where they sought leave to cease to act for the Plaintiff. They also sought that the deposited amount in Court of Kshs. 500,000/- be released to the firm of Advocates. The grounds supporting that application is that the Plaintiff had failed to give his Counsel instructions to proceed with this matter. In regard to the release of Kshs. 500,000/- it was deponed by the Plaintiff's Advocate that Khatib & Company Advocates needed to have the Kshs. 500,000/- released in order to pay it back to the depositor.
3. I have considered the application, affidavit in support and affidavit in reply. The fact that the Plaintiff has failed to instruct his Counsel is sufficient ground to grant leave to his Counsel to cease to act for him.
4. However, on the release of Kshs. 500,000/- I find that the Order of 27th August 2014 was very clear, that is the condition of granting the Plaintiff an injunction was for the Plaintiff to deposit that amount into Court. That amount therefore, if it is to be released ought to be released to the Plaintiff. Even then this Court has discretion on whether the Plaintiff would be entitled to such release. Further since the Plaintiff has failed to give instructions to the firm of Khatib & Company Advocates, then one wonders who instructed that firm to seek release of that deposit.
5. The Plaintiff has continued to enjoy injunctive orders but obviously is not interested in hearing of his application inter partes. That injunction shall be vacated/discharged.

6. I grant orders that-

- a. Leave is hereby granted to firm of Khatib & Co. Advocates to cease to act for the Plaintiff.
- b. The deposit of Kshs. 500,000/- shall continue to be detained in Court under this matter.
- c. The injunction granted on 27th August 2014 and extended thereafter is hereby discharged.
- d. The Plaintiff shall pay costs of the Notice of Motion dated 27th October 2014.

DATED and DELIVERED at MOMBASA this 5TH day of MARCH, 2015.

MARY KASANGO

JUDGE