



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU

CIVIL COMMERCIAL CASE NO.16 OF 2005

HARUN EMMANUAL SIGWE.....PLAINTIFF/RESPONDENT

VS.

STANDARD CHARTERED BANK(K) LTD.....DEFENDANT/APPLICANT

RULING

1. This is a ruling on an application dated 17/9/2012. The application seeks to review court orders made on 26/4/2005. The order is said to be a mandatory injunction and the court is asked to set it aside or review it.
2. The granting of the orders was said to be an error. According to the applicant, a mandatory injunction should not issue in absence of special circumstances and only in clear cases.
3. The plaintiff faults the applicant/defendant for coming to court about 7 years after the orders were issued. "Equity helps the vigilant and not those who are negligent" the plaintiff submitted.
4. The plaintiff further said that the grant of the orders was not a mistake or error and no review therefore should be allowed.
5. According to the plaintiff, the orders earlier granted Exparte were confirmed on 12/5/2005 when the applicants came for hearing interpartes. Counsel is wrong on this. The record of 12/5/2005 shows that the orders were merely extended, not confirmed.
6. I have looked at the application that gave rise to the orders. The application is a Chamber Summons then brought Under order XXXIX rule 1 of Civil Procedure Rules and Sections 3A and 63(c) and (e) of Civil Procedure Act. That was the procedural law applicable to restraining orders at the time. What was granted then was prayer 2, which reads as follows:

Prayer 2: That pending the hearing and determination of the application interparts there issue a mandatory injunction against the defendant by themselves, their servants, agent, employees or otherwise or compelling them to stop and/or desist from interfering or selling and or/alienating the Applicant/plaintiff's parcel of land known as L.R. Bukhayo/Karko/2393 approximate area 0.197 of acre and/or stop/ restrain the defendant from all forms of advertisement of the said parcel of land together with the development therein.

7. The plaintiff/respondent responded to the application vide grounds of opposition filed on 25/9/2012 and dated the same. The plaintiff said the application is incompetent and abuse of court process, there

being no new issue raised.

8. At this point, I wouldn't wish to belabour so much the merits or demerits of the application. I say so because in my view, there are no orders to review or vary.

Order 40 rule 6, which is the current version of Order XXXIX then applicable at the time, states as follows;

Rule 6: Where a Suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.

1. In this matter, the order was issued way back in year 2005. They are sought to be reviewed vide an application filed on 21/9/2012. The lifespan of that order, whether granted *ex parte* or confirmed as alleged by plaintiff, expired long ago. There is no evidence that the plaintiff ever asked for their extension after 12 months. The assumption that the orders are in force is fallacious and has no basis in law. Had the defendant counsel been alive to the provision just cited, she would have known that the order lapsed long ago.

2. This application then must fail because it seeks to address a non – existent status. The application is therefore dismissed. Costs in the cause.

3. But I need to point out that had the order been in existence as a mandatory injunction, the law is as stated by the defendant counsel. But that is not the case and, as I have said, the application is dismissed.

A.K.KANIARU

ENVIRONMENT & LAND – JUDGE

7/5/2015

7/5/2015

A.K. Kianiaru J

John Ogendo court clerk

No party present

Interpretation English/Kiswahili

Ayayo for plaintiff/Respondent

Omondi T. for M/S Stava for defendant/Applicant.

Court: Ruling on application dated 17/9/2012 read and delivered in open court.

Right of appeal 30 days

A.K.KANIARU

ENVIRONMENT & LAND – JUDGE

7/5/2015