



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 192 OF 2015

A1 OUTDOOR LIMITED.....PLAINTIFF/APPLICANT

VERSUS

MANJIT SINGH SETHI

SURINDER SINGH SIHRA

JASPAL SINGH VIRDEE

EAST AFRICA RAMGARHIA BOARD.....DEFENDANT/RESPONDENTS

RULING

1. The applicant filed an application dated 22nd May 2015 under Order 40 Rules 2,4(1) and 4(2) of the Civil Procedure Rules and sections 1A and 1B of the Civil Procedure Act seeking orders that: service of the application be dispensed with at the first instance The application be certified urgent and it be heard exparte. The respondents be restrained from trespassing upon and/ or destroying the applicants billboard structure erected on L.R no. 209/14826 and/or any media that may be exhibited thereon or obstructing the applicant's gents from accessing, placing, replacing content thereon, cleaning or repairing the bill board. They prayed further that respondents or their agents be restrained from assigning rights granted to the applicant in respect of the property L.R no. 209/14826 to any other party pending the determination of the suit. Costs be in the cause.

2. The application is premised on the grounds that the applicant entered into an undated agreement with the respondents where it was issued with a license to erect and maintain a billboard on the respondents property (hereinafter referred to as the 'suit premises') for a term of 5 years from 1st February 2015 which was subject to the applicant paying an annual fee of kshs 500,000/=. The applicant went ahead to erect the bill board and entered into an agreement with a third party to advertise on its bill board. The respondents is now threatening to remove or destroy the billboard structure if the applicant does not remove it within 24 hours as of the 21st May 2015. The applicant is apprehensive that if orders sought are not granted he will incur business losses and the respondents might proceed to contract with a third party. The motion is supported by the affidavit of the Applicant.

3. The Respondents opposed the motion by filing a replying affidavit dated 5th June 2015 sworn by **Parminder Singh Manku** who deponed that: The claims by the applicant are false and the agreement referred to by the applicant is non-existent as they have never entered into any agreement. There is no valid contract between the two parties and that the sum of Kshs 500,000/= was not paid to the respondents as alluded to by the applicant. In the month of August 2006, the respondents signed an

agreement to lease the suit premises to the applicant for purposes of putting up the billboards. The payments continued until December 2009 when a cheque which bounced when banked on its due date was issued and it was not until January 2015, when the applicant sent a cheque in settlement of the outstanding amount which the respondents accepted. The erection of the billboard that was done in March 2015 was done without the respondents consent.

4. The applicant further filed a supplementary affidavit where he insisted that they had an agreement and the respondents in response filed a further affidavit where they reiterated that there was no valid agreement between them and the applicant.

5. It is the submission of the Applicant that the parties herein entered into an agreement on 1st February 2015 to erect a bill board on the suit premises where it was agreed that the applicant will pay the license fee of Kshs 500,000/= per annum for the period 2015-2016. The respondents wrote to him an email stating that the fee will be utilized as payment of alleged outstanding debt that. The previous agreement dating back to September 2006- October 2009 expired with no outstanding debts. is unknown to the applicant. The respondents on the other hand submits that there is no agreement for a license term of five years for the period commencing on 1st February 2015. An agent of the applicant, **Stephen Wanjau** has been making payments on behalf of the applicant. Before the removal of the billboard, the agent requested that he be allowed to continue to the end of February 2010 for payment of Kshs 500,000/=. The applicant then issued the respondents with cheques of this amount drawn by Brooksbrough company limited. They further argued that the injunction orders sought are mandatory injunctions which have higher level of proof than ordinary injunctions.

6. The principles to be taken into account by the court in an application for interlocutory injunctions were stated in the case of **Giella -vs- Cassman Brown Ltd. [1973] EA 358.**

An applicant has to show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant will otherwise suffer irreparable loss not capable of being compensated in damages. Thirdly, if the court is in doubt, it will decide the matter or application on a balance of convenience.

7. The applicant claims that he entered into a contract with the respondents where he was licensed to erect a billboard. He paid the consideration of Kshs 500,000/=. He has annexed a signed agreement between the parties which agreement is between the respondents and the applicant. Though undated, the agreement is executed by both parties and it sets out that the consideration payable shall be Kshs 500,000/= per year. The agreement is deemed to remain in force for five years starting from 1st February 2014.

8. Having considered the rival pleadings and the material placed before this court, there are salient issues which remain uncontested. It is not in dispute that the parties herein entered into an agreement to lease to the applicant the suit premises where it erected a bill board in between 2006 and 2009. What is in dispute is the purported agreement which was allegedly entered in 2015. The parties are in disagreement. The applicant claims that it had no contractual obligation between the year 2009 and 2015 given that the agreement lapsed back in 2009. The respondents on the other hand, are adamant that the applicant had defaulted in its obligations under the Contract as it had breached its contractual obligations and that it was entitled to forfeit the Kshs 500,000/=. They argued that the contract entered in 2006 required the applicant to pay consideration which it failed to do, causing it to run into debts until 2015 when it paid a sum of Kshs 500,000/=. It is therefore the respondents argument, that there was no further agreement entered between the parties to lease the premises in 2015.

9. I also note that the applicant claims that he has entered into an agreement with a third party following the contentious contract to exhibit its media content. The applicant also claims that its purported agent, a **Mr. Stephen Wanjau** was not acting under its instructions and all his dealings with the respondents should not be visited upon it. The respondents on the other hand insists that **Mr. Stephen Wanjau** was an agent of the applicant and all his actions were binding on the applicant. The applicant or through its agent **Stephen Wanjau** made payments in that regard. The parties had previously contracted way back in 2006-2009 and later contracted in 2015, according to the applicant, this was not the case according to the

respondents who is adamant that though there was contract in 2006 -2009 which the applicant is in breach due to outstanding payments, the alleged 2015 contract is non-existent. It is on this basis that the applicant claims that there is breach of contract. It is the Applicant's contention that unless the order is granted, the Respondents are likely to destroy and remove the applicant's billboard.

10. In my view, the respondents assertion that there is no agreement between them while the applicant alleges that there is one. If indeed an injunction is not granted and the billboard is removed or destroyed then the applicant will suffer loses especially considering that a third party is involved. I am convinced that the applicant has shown a prima facie case with high chances of success. Consequently I grant the applicant an order of temporary injunction to restrain the Respondents from removing or destroying the applicant's billboard erected on the suit premises pending the hearing and determination of the suit. costs of the motion is granted to the applicant.

Dated, Signed and Delivered in open court this 9th day of October , 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff.

.....for the Defendant.