

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 577 OF 1998

PARAGON HOTELS LTD AND 3 OTHERS.....PLAINTIFF

versus

PAN AFRICA INSURANCE CO. LTD AND ANOTHER.....DEFENDANT

R U L I N G

On 5th October, 1998, the plaintiffs/applicants obtained an ex-parte order on an application for an injunction to restrain the defendant from advertising for sale their parcels of land the subject of these proceedings. As at that time, order issued by Waweru J. on 8th September, 1998 in an application which was yet to be heard.

When the applicants moved the court for the interim order issued on 5th October, 1998 aforesaid, it was not disclosed to S. Amin J. that the earlier application was pending for hearing inter partes.

Be that as it may, when the latter application came up for hearing before me inter partes, it became clear that, the sum due and owing by the applicants to the 1st defendant was not in dispute and the only prayer was that the applicants needed one more and last extension of time to pay the said sum.

The reasons advanced are that there is a joint venture with third parties which is about to be sealed, the applicants have paid a total of Kshs. 24 million so far and if the property is sold during the present economic slump the loss will be enormous.

The defendants through learned counsel have pointed out, and I think rightly so, that the applicants are guilty of non-disclosure of the pending application before the present one was filed. There was a consent order the terms of which have not been fulfilled by the applicants and indulgence has been extended severally yet no money has been paid. Indeed two cheques for shs. 35 million have been dishonoured. The applicants have not come to court with clean hands.

In ordinary circumstances the applicants would be shut out of the avenues of justice due to their own conduct in these proceedings. The record speaks for itself.

What I have noted however is that there appears to be a desperate move by the applicants albeit late, to salvage the various properties threatened with the sale. I know there is no affidavit sworn by any party from the joint venture group, in the third parties. But their representative attended these proceedings and intimated to the court-off the record that indeed the joint venture was in its final stages of inception.

Further to the foregoing, the payment of kshs.24 million is a gesture towards the right direction and the request for a limited time may not, in my view be misplaced.

The order sought is discretionary which discretion has to be exercised judicially, what the 1st defendant are after is to realise what is lawfully due and payable. The subject matter is money. Any delay in settlement attracts interest and I believe if the 1st defendant can be made to wait for a specified time, compensation by way of interest will call for the discretion of the court to be exercised in favour of the applicants.

The applicants have asked for 60 days. the 1st defendant has waited for much longer in the past. As this is the last chance the applicants have asked for I hereby grant the extension as prayed. In so doing the applicants have written their own judgment. This shall be the last extension.

And so the orders shall be that, the time to liquidate the balance of the decretal sum is hereby extended by 60(sixty) days from the date hereof. The applicants shall pay interest thereon up to the last date the sum is fully paid. The applicants shall not be entitled to any other extension of time and lastly they shall pay the costs occasioned by this application.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of November, 1998.

A. MBOGHOLI MSAGHA

JUDGE