



REPUBLIC OF KENYA

Kalinga v Trade Bank Ltd

High Court, at Mombasa December 4, 1992  
Wambilyangah J

Civil Case No. 60 of 1991

December 4, 1992, **Wambilyangah J** delivered the Ruling.

This is the application by Trade Bank Limited seeking that the Order for injunction given by this court on the 22nd of March 1991 restraining it from exercising its chargee's statutory rights to sell chargor's property be discharged on the ground that fresh circumstances which have come into play have rendered the injunction unduly harsh, unnecessary or unworkable. The application has been framed under Order XXIV rule 4 of the Civil Procedure Rules.

The injunction was granted on the sole ground that the statutory notice which was issued and served by the Bank under S. 69A of the Transfer of Property Act (1982) of India, on the 31st July 1990 was superseded by the fresh arrangements between the parties which were embodied in an agreement dated 6th August 1990.

But in paragraph 6 of the affidavit sworn by Gideon Ndambuki on the 20th December 1991 to support the present application it is averred that since the loan facility was granted to the plaintiff on the 6th August 1990 the plaintiff never made an repayments of either principal or the interest thereon. And as at the 10th of April 1991 the outstanding loan was Kshs.19,296,306/75 and on that sum interest at 19% per annum was being charged.

According to paragraph 4 of the same affidavit a fresh statutory notice was served on the chargor. This notice was issued within the terms of the new agreement of 6th August 1990 which, admittedly, governs the relationship of the parties inter-se.

All the matters deponed to in the applicant's affidavit were not procedurally controverted since the Respondent did not file his affidavit in-reply to the application. I am thus constrained to accept the applicant's allegations as proved.

In the circumstances I hold that it has been adequately demonstrated by the applicant that the very grounds for which the injunction dated 23rd March 1991 was issued by the court do not subsist any more. So the injunction is now entirely unnecessary and irrelevant. It is discharged accordingly. It follows that the application is allowed with costs.