



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**CIVIL CASE NO. 3490 OF 1987**

**M A.....PLAINTIFF**

**VERSUS**

**HILTON INTERNATIONAL (K) LTD .....1<sup>ST</sup> DEFENDANT**

**M A.....2<sup>ND</sup> DEFENDANT**

**RULING**

Mrs M A, the plaintiff in this case, is a very angry woman. For more than 7 years she has been involved in a bitter and acrimonious matrimonial feud with M A, the second defendant, who is her former husband. The bitterness that has developed shows in her pleadings, affidavits and manner of speech. She regards Mr Satish Gautama who appears for M A in this case and has apparently also acted for him in the matrimonial dispute as the villain of the piece. She uses abusive and derogatory language against Mr. Gautama in her affidavit and submissions. She calls him crude and savage – a felonious man worse than her husband. And she adds for good measure that she has been a victim of injustice in this country. An angry woman is worse than a smoking house (Shakespeare).

In her plaint filed on September 3, 1987 the plaintiff states that on January 29,1987 she checked into the Nairobi Hilton with her children and she stayed there until February 13, 1987 when she checked out or was asked to leave. She left behind an unsettled bill of Kshs 24,060/90. As she had no money to settle the account she left behind some of her jewellery as security for the debt. In paragraph 4 of her plaint she pleads an oral agreement with Hilton according to which payment was to be made at some unspecified date in the future. She puts a value of Kshs 350,008/- on her jewellery but I have not seen or been shown an official valuation. She seeks an injunction against Hilton restraining it from disposing of the jewellery and for a tracing order. Her cause of action against the second defendant which is pleaded in paragraph 8 of the plaint is even more difficult to understand. She says that:-

“the second defendant being the husband of the plaintiff has a duty to maintain the plaintiff several times (sic) to pay the hotel bills but he has refused and/or neglected to do so.”

I am informed by Mr Gautama and this is not disputed by the plaintiff that the marriage between her and the second defendant was dissolved some while ago and the second defendant pays to the plaintiff a sum of Kshs 4,000/- pm purely out of compassion. She admitted to me that this amount is paid to her promptly every month and the second defendant is not in default. She also told me that she has a house which she has let and in respect of which she is in receipt of some rental income. In the circumstances I do not see how she can have any cause of action against

M A but as the case has yet to come to trial; I do not have to deal with the point. In prayer (c) in her plaint she asks an order against the second defendant to pay off the debt to the hotel so that her jewellery can be released. I infer from this and I regard it as a perfectly reasonable inference in the circumstances that the plaintiff did not check into the Hilton because she was homeless or compelled by unavoidable necessity but simply to get even with her former husband. In this regard she was totally misguided. Anyway she decided to check into a 5-star hotel and incurred a liability when from her own admission she had no intention of personally settling the account right from the beginning.

In her chamber summons taken out on September 3, 1987 and on the basis of which she was given an *ex parte* injunction on September 10,

1987 under a certificate of urgency she is seeking:

- (1) A temporary injunction against Hilton;
- (2) A tracing order against Hilton;
- (3) An order against the second defendant to pay off the debt so that her jewellery can be released to her; and
- (4) Costs

The application is supported by the affidavit of the plaintiff in which she states the circumstances in which the liability was incurred including an allegation that she has been robbed of her jewellery which she claims by one Gontier, an employee of Hilton. Although she admits that the marriage between her and the second defendant has been dissolved by a decree of divorce she says in paragraph 9 of her affidavit that he should nevertheless settle the bill because he is a millionaire medical practitioner. It is altogether a most confused affidavit but I have read every line of it very carefully and considered everything the plaintiff has said in her affidavit and in her submissions.

Mr Ojiambo who appears for Hilton has submitted before me that as the liability was incurred by the plaintiff and remains unsettled to this day Hilton is entitled to retain the jewellery until the bill is paid. He referred me to section 13 of the Hotels and Restaurants Act (Cap 494) the operative part of which reads:

“13(1) The holder of a hotel licence shall, in addition to the ordinary lien of an innkeeper at common law, have the right absolutely to sell by public auction any property deposited or left with him or in his hotel or in any way premises appurtenant or belonging to the hotel, where the person depositing or leaving the property is or becomes indebted to him for accommodation, food or drink at the hotel.”

Then follows the provision which I need not read at this stage. The liability for payment attaches to the person depositing or leaving the property at the hotel and who has become indebted to the innkeeper or the owner of the hotel for accommodation, food or drink at the hotel. In this particular case it is the plaintiff who sought and was given accommodation and presumably food and drinks as well and who deposited or left her jewellery at the hotel. She is clearly liable to pay off the debt in order to save or retrieve her jewelry.

The conditions for the grant of an interlocutory injunction were finally settled in East Africa in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 where in the course of his judgment Vice President Spry said:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a *prima facie* case, with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. *EA Industries*

vs *Trufoods* [1972] EA 420.”

In this particular case and having regard to what I have already said in relation to the plaintiff’s liability to pay the debt she has incurred and the fact that the second defendant is not her husband in the legal or any sense, I have no hesitation to forming a tentative view that she has not shown a *prima facie* case with any probability of success against any of those defendants. Even if I was wrong in forming this view, I do not see that Hilton Hotel would be unable to meet any award of damages which may ultimately be made against it. In the upshot and while I have considerable sympathy for the plaintiff, I decline to grant the orders sought in her chamber summons and dismiss her application with costs.

Dated and delivered at Nairobi this 22<sup>nd</sup> Day of September 1987

**R.O KWACH**

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**JUDGE**