



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELCNO.719 OF 2017

WILFRED WAWERU & ANOTHER.....PLAINTIFF

=VERSUS=

KENYA WOMEN MICROFINANCE LTD.....DEFENDANT

RULING

1. The first plaintiff/applicant is the registered owner of LR No.Dagoreti/ Kangemi/527(suit property). The second plaintiff/applicant is the wife of the first applicant. The applicants had taken a loan from the respondent and offered the suit property as security. On 22nd August 2017, the respondent notified the applicants through a letter that they were in arrears of **Kshs.1,281,893,57** which they were required to pay within 3 months failing which the respondent would realize the security.

2. The applicants moved to court and filed a suit against the respondent. They contemporaneously filed an application dated 21st November 2017 in which they sought an injunction against the respondent. The applicants contend that they have been making repayments promptly and that they were not explained the basis of increase of monthly repayments. They further contend that their attempts to seek an explanation from the respondent as to the amount owing has never been addressed hence the filing of this application.

3. As the application was pending determination, the applicants filed another application dated 14th May 2018 in which they wanted an injunction issued against the respondent pending determination of the application of 21st November 2017. The applicants argue that they have since been given 45 days' notice of sale of the suit property which is due on 12th June 2018.

4. The respondent opposed the applicants' application based on a replying affidavit sworn on 5th December 2017. The respondent contends that the applicants were duly informed of the adjustments of interest vide letter of 5th September 2015. The increase was pursuant to Central Bank's introduction of the Kenya Bank's Reference Rate which is a uniform bank rate that guides the banks on pricing of loans. Following the adjustment of the interest, the applicants were notified to clear their arrears through letter of 22nd August 2017.

5. The respondent further contends that the filing of the application of 21st November 2017 was speculative and amounts to abuse of the process of the court as no intention to sale had been issued. In answer to the respondent 's contention that interest was lawfully increased, the applicants filed a further affidavit in which they contend that it was not an express term of the loan agreement that interest was to increase. On the issue of filing an application for injunction before notice of intention to sale had been issued, the applicants contend that they were seeking equitable reliefs and as such they were at liberty to move the court even before notification of sale.

6. I have considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the submissions by the parties. This being an application for injunction, I have to decide on whether the applicants have met the threshold for grant of an injunction. The conditions for grant of an injunction were well set out in the celebrated case of **Giella Vs Cassman Brown & Co Ltd (1973) EA 358**. Firstly an applicant must establish a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer injury which will not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

7. The conditions set out in the Giella case (supra) are sequential in that the second condition can only be addressed if the first one is satisfied. See **Kenya Commercial Finance Co.Ltd Vs Afraha Education Society (2001) EA 86**. The question which then follow for determination is whether the applicant have established that they have a prima facie case with probability of success. A prima facie case in a civil application is one which on the material presented to the court, a tribunal properly directing itself would conclude that there exists a right which has a apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. See **Mrao Vs First American Bank of Kenya Ltd & 2 others (2003) Eklr.**

8. The applicants are seeking an injunction on the basis that they do not understand how interest was increased or how the arrears which they are alleged to owe came up. I have seen the letters annexed to the respondent's replying affidavit. The applicants were notified about what they owed and they were given time to repay what they owed. The applicants cannot turn round and claim that they did not know how the arrears arose. The applicants are not disputing their indebtedness to the respondent. They only seem to dispute the aspect of interest and amount owed. It is trite law that any dispute as to interest charged or amount owing is no ground for grant of injunction. The applicants are not challenging the notices which were issued before and after the application of 21st November 2017.

9. The applicants offered the suit property as security. They were aware that if they defaulted, the property would be up for sale. They cannot now claim that it is their matrimonial property which they are likely to lose. The applicants have been making attempts to negotiate but the attempts seem not to be serious as they were only out to buy time. I do not see what prima facie case the applicants have. In the main suit, they are seeking an injunction to stop the defendant from realizing the security. This is the injunction they are seeking herein. I find no merit in the applicants' application which is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 11th day of June 2018.

E.O.OBAGA

JUDGE

In the presence of:-

Mrs Akwana for applicant

Mr Achoki for M/s Maina for respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE