



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL SUIT NO. 240 OF 2012

JOSPHAT IMBAKA LUMADEDE

T/A DAYSEY ENTERPRISESPLAINTIFF/RESPONDENT

VERSUS

ROBERT WAWERU MAINA

T/A ANTIQUE AUCTIONS AGENCIES1ST DEFENDANT

EQUITY BANK COMPANY LIMITED2ND DEFENDANT

RULING

The Application dated 12th November, 2013 and filed by the Defendants is seeking for the following orders:

a. That this Honourable Court be pleased to discharge, set aside and or vacate the interlocutory orders of injunction granted by the court on 6th July, 2012.

b. That costs of this Application be provided for.

2. The Application is premised on the grounds that the 2nd Defendant advanced to the Plaintiff a loan; that the Plaintiff consequently charged parcel of land known as Ngong/Ngong/23008 (*the suit property*) and that the Plaintiff defaulted in servicing the said loan.

3. According to the Defendants, the temporary orders of injunction which are “*permanent*” in nature are causing untold injustice to the 2nd Defendant.

4. It is the Defendants’ case that it is an abuse of the court process to have temporary orders of injunction in force beyond fourteen (14) days.

5. In response, the Plaintiff deponed that on 9th July, 2012, the court granted the injunctive orders restraining the Defendants from interfering with the suit property; that despite the cause of action subsisting, there is need to settle the outstanding amount due to the 2nd Defendant and that his advocate engaged the 2nd Defendant’s advocate in negotiations.

6. According to the Plaintiff, there is need to preserve the suit property as he settles the outstanding amount.

7. The 2nd Defendant's advocate swore a Further Affidavit in which he deponed that the Plaintiff has continued to enjoy interim orders of injunction for over a period of two (2) years.
8. According to counsel, the Plaintiff instigated negotiations after the current Application was filed and that the Plaintiff has not given sufficient reasons to warrant him to default in fulfilling his obligations.
9. The advocates for the Plaintiff and the Defendant filed submissions which I have considered.
10. It is not in dispute that on 6th July, 2012, the Plaintiff filed an Application dated 4th July, 2012 seeking for a temporary injunction in respect to the suit property pending the hearing of the suit.
11. When the Application came up for hearing on 17th July, 2012 in the presence of the Plaintiff's and the Defendants' advocate, the court extended the orders that it had granted on 6th July, 2012 "*till the hearing of the Application.*" The court further directed the parties to fix the Application for hearing on a priority basis.
12. It would appear that neither the Plaintiff nor the Defendants fixed the Application for hearing until the current Application was filed and fixed for hearing.
13. Ironically, the current Application seeking to discharge the orders of 17th July, 2012 has been pending for hearing since the year 2013.
14. The Defendants/Applicants have not informed the court why they did not fix the Plaintiff's Application dated 4th July, 2012 for hearing.
15. It is trite that once a suit or an Application is filed in court, either party can fix the said suit or Application for hearing.
16. Instead of fixing the Application dated 4th July, 2012 for hearing, the Defendants opted to file the current Application, which has just delayed the hearing of the earlier Application further.
17. Considering that the interim orders that were granted by the court were to remain in place until the Application is heard inter-partes, and in view of the fact that the Defendants have not informed the court why they did not take the initiative of fixing the said Application for hearing, I find the current Application to be unmeritorious.
18. I therefore dismiss the Defendants' Application dated 12th November, 2013 with no order as to costs.

DATED AND DELIVERED AT MACHAKOS THIS 31ST DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE