



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.241 OF 2016

GEORGE ABONYO OBETE

T/A RAKWEL BODY BUILDERS.....PLAINTIFF

VERSUS

ECOBANK KENYA LIMITED.....DEFENDANT

RULING

1. **George Abonyo Obete T/A Rakwel Body Builders**, the Plaintiff, filed the motion dated 2nd February 2017, seeking for the court to reinstate the interim orders that were vacated on the 1st February 2017. The application is based on the eleven grounds on its face marked (a) to (k) respectively, and is supported by the affidavit sworn by Bruce Odwuor Odeny, counsel on record for the Plaintiff, on the 2nd February 2017.

2. The application is opposed by the Ecobank Kenya Ltd, the Defendant, through the replying affidavit sworn by Ocharo Kebira,

counsel on record for the Defendant, on the 17th march 2017.

3. The application was heard on the 27th March 2017 when

Mr. Odeny and Ocharo advocates for the Plaintiff and Defendant respectively, made their oral rival submissions.

4. The issues for the court's determination are as follows;

- a. Whether the application has been brought under the correct provisions of the law.
- b. Whether the Plaintiff has established reasonable grounds for the order sought to be granted.
- c. Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, the submissions by counsel and come to the following findings;

- a. That the court issued prayer 2 of the notice of motion dated 9th September 2016 in the interim pending the inter parties hearing on the 11th October 2016.

b. That the interim order was extended on the 11th October 2016 to 1st February 2017 when the parties were to have filed and served their submissions within the timelines given.

c. That though the Plaintiff was to have filed and served his submissions in 14 days from 11th October 2016, none was filed until the 17th November 2016 which was outside the time and no enlargement or extension of time had been sought and/or obtained. That further, when the matter came up on the 1st February 2017, the Plaintiff's written submissions filed on the 17th November 2016 had not been served on the Defendant's counsel, whose 14 days time was according to the order of 11th October 2016 to start running after service. That the Plaintiff's failure to obey the directions of 11th October 2016 resulted to the delay in the hearing and determination of the application and contravenes the provision of **Section 1A** of Civil Procedure Act. That the failure to comply with the said directions is not an excusable mistake but rather an act of negligence by counsel and the party has recourse against the advocate in accordance with the law [see **Charles Omwata Omwoyo –V- African Highlands & Produce C. Ltd** (2002) eKLR, **Ketteman –V- Hausel Properties Ltd** (1988) 1 All ER 38 and **Tana & Athi River Development Authority –V- Jeremiah KimIgho & 3 Others** (2015) eKLR .]

d. That on the plaintiff's failing to comply with the order of 11th October 2016 leading to delay in finalization of the application, the Defendant's counsel orally moved the court to discharge the interim injunction order and the application was granted.

e. That this application is said to be brought under **Order 40 Rule 1** of the Civil Procedure Rules which provides for cases in which temporary injunction may be granted. That the main purpose of the application is to reinstate the interim order vacated on the 1st February 2017 and **Rule 1** of the said order has no relevance to this application for reinstatement of a discharged interim injunction order.

f. That the Plaintiff and his counsel on record failure to comply with the directions of the court of 11th October 2016 was against the duty the Law places on them under **Section 1A (3) of the Civil Procedure Act, Chapter 21 of Laws of Kenya** which is “ **a duty to assist the court to further the overriding objective of the Act, to that effect, to participate in the processes of the court and comply with the directions and orders of the court.**” The overriding objective of the court is set out in **Section 1A (1)** as “*to facilitate the just, expeditious, proportionate and affordable resolution of the Civil disputes*”. That the failure to comply with the clear directions of the court on the timelines of filing and service would obviously result to delay the finalization of the matter which inevitably means more costs.

6. That flowing from the foregoing the court finds no merit in the notice of motion dated 2nd February 2017 and the same is hereby dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 10TH DAY OF MAY 2017

In presence of;

Plaintiff Present

Defendant Absent

Counsel

Mr. Odeny for the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017

10/5/2017

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

Mr. Odeny for the Plaintiff/Applicant

Order: The ruling dated and delivered in open court in presence of the Plaintiff and Mr. Odeny for the Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

10/5/2017