

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 257 OF 2013

WASHIKA WALUCHIO ALLY.....RESPONDENT

VERSUS

MOLYN CREDIT LIMITED.....APPLICANT

RULING

This application is dated 9th May 2016 and is brought under Section 63 (5) of the Civil Procedure Act, Order 40 rules 6 of the CPA (2010) and all enabling provisions of the law seeking the following orders;

1. **THAT** this application be certified urgent and be heard on a priority basis.
2. **THAT** the injunction issued herein restraining the applicant from realizing land parcel number S. WANGA/EKERO/4099 be vacated.
3. **THAT** the costs of this application be borne by the respondent.

The application is based on the following main grounds; the respondent is abusing the due process of this court by failing to take steps to have the matter heard and substantially determined in the shortest time possible as ordered by the court on 20th November 2013. On the 2nd July, 2014 when the matter was adjourned at the instance of the respondent, he was ordered to pay Ksh. 600,000/= within 14 days which the respondent failed to do. The defaulted amount continues to attract penalties and interest and the applicant may be unable to get back the loan advanced.

The applicant submitted that, he is a director with the applicant's company hence conversant with the issues raised herein. He have perused the ruling made herein on 20/11/2013 for which it was stated:- "However as the matter has been filed as a fast tract suit, the plaintiff must demonstrate hereafter that he is serious and take steps to ensure the suit will be heard and substantively determined in the shortest time possible." That the respondent has not adhered to the court directive as stated above in that on 15th January 2014 it is the applicant who fixed the matter for hearing on 10th June 2014. On that day the respondent sought an adjournment on the basis that the respondent was sick. On 2nd July 2014 the plaintiff/respondent was not ready to proceed. In the ruling made on the application for adjournment the court observed as follows:- "I will allow the adjournment sought. However the plaintiff as promised will pay to the defendant an amount of Ksh. 600,000 within 14 days from today's date." The plaintiff has not been making any payments towards reduction of the debt as promised except Ksh. 300,000 and Ksh. 200,000 paid on the 31st March 2015 and 8th April 2015 respectively. The respondent was served with this application but failed to attend court or file and grounds in opposition. The hearing date was taken by consent and the respondent still failed to appear.

This court has considered the applicant's submissions and the supporting affidavit therein. The application being one that seeks injunctions, has to be considered within the principles set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358** and which are:-

1. ***The applicant must show a prima facie case with a probability of success at the trial***
2. ***The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,***

3. If in doubt, the Court will decide the application on a balance of convenience.

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

I have considered the applicants submissions and the court record. It is on record that on 15th January 2014 the applicant who fixed the matter for hearing on 10th June 2014. On that day the respondent sought an adjournment on the basis that the respondent was sick. On 2nd July 2014 the plaintiff/respondent was not ready to proceed. In the ruling made on the application for adjournment the court observed as follows:- "I will allow the adjournment sought. However the plaintiff as promised will pay to the defendant an amount of Ksh. 600,000 within 14 days from today's date." The applicant states that the plaintiff has not been making any payments towards reduction of the debt as promised except Ksh. 300,000 and Ksh. 200,000 paid on the 31st March 2015 and 8th April 2015 respectively. The plaintiff has not disputed this. I find that the actions of the plaintiff are meant to stall this matter and this is an abuse of the due process of this court. It is evident that the plaintiff is not acting in good faith. I find this application has merit and grant it as prayed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 25TH DAY OF JULY 2017.

N.A. MATHEKA

JUDGE