



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1295 OF 2018

BETWEEN

BERNARD MUNANU.....CLAIMANT

VERSUS

EQUITY BANK [K] LIMITED.....RESPONDENT

RULING

1. In his Statement of Claim filed on 8th August 2018, the Claimant asks the Court to declare that he was unfairly dismissed by the Respondent, he is paid: 12 months' salary, presumably as compensation for unfair termination; 1-month salary in lieu of notice; damages for violation of his right to privacy; costs and, granted any other suitable relief.
2. The Respondent filed its Statement of Response on 8th September 2018. It denies that the Claimant was dismissed unfairly, explaining that he was dismissed for being absent from his workstation, without the leave of the Respondent.
3. On 3rd February 2020, the Claimant filed an Application for an injunction, to restrain the Respondent from selling, disposing or in any way dealing with the property known as RURIRU /RURIRU/ EAST BLOCK 2 /5859.
4. He explained in his founding Affidavit that he purchased the property while in employment, through a loan extended to him by the Respondent. He fell into repayment arrears after dismissal, and on 21st December 2019, the Respondent instructed Auctioneers to sell the property to redress the loan obligation.
5. The Court gave him the orders on 3rd February 2020, stopping sale. Hearing *inter partes* was slotted for 20th February 2020. Hearing did not take place and the interim orders were extended.
6. Through an Application dated 7th April 2021, the Respondent has moved the Court to review and set aside the orders made on 3rd February 2020, and to dismiss the entire Claim for want of prosecution.
7. The Application is based on the Affidavit of Kinyanjui Theuri, Respondent's Advocate, sworn on 7th April 2021. He explains that the Claimant has not taken steps to prosecute the Claim since 9th March 2020, when the matter was last in Court; the Claimant did not seek an order of injunction to restrain the Respondent from exercising its statutory power of sale; interim orders have been in place for more than a year; and it is prejudicial to the Respondent to keep the Claim pending before the Court. It is submitted for the Respondent that there is no correlation between the interim orders and the prayers in the substantive Claim.
8. The Claimant submits that interim orders were served upon the Respondent. The Respondent did not file response to the Application. The inference was that the Application was not opposed.
9. The Claimant submits that the powers of the Court to deal with '*applications for preservation orders, including injunctions is in Order 40 Rules 1 and 10 of the Civil Procedure Rules. This Order applies in all civil cases, whether under Employment, Land and Civil.*'
10. The powers are unfettered. The property was acquired by the Claimant through a mortgage facility accorded by the Employer. The loan amount was Kshs. 5,300,000, payable at an interest rate of 8% per annum. This was converted to a commercial rate of 13% per annum upon dismissal of the Claimant. The Claimant had re-paid Kshs.764,980, by the time he left employment. This aspect of the dispute is properly before the Court.

11. On dismissal for want of prosecution, the Claimant submits that there are other Claims before the Court, filed before 2018. The Court is giving priority to hearing of those Claims. There was a shutdown of Judiciary operations for most of the year 2020, on account of the public health situation caused by coronavirus. It is not true that the Claimant neglected prosecution of the Claim.

12. It was directed on 30th September 2021, that the Application is considered and determined on the strength of Written Submissions, which have been confirmed to have been filed by the Parties. Ruling was due for delivery on 30th November 2021, but is ready for delivery on the date shown below.

The Court Finds: -

13. The submission by the Claimant, that Applications for injunctions across the Judiciary are governed by Order 40 Rule 1 and 10 of the Civil Procedure Rules, is incorrect.

14. Applications for temporary injunctions and other interlocutory orders before the E&LRC, are regulated under Rule 17 of the E&LRC [Procedure] Rules, 2016.

15. The Rule states, *inter alia*, that, an *ex parte* injunction may be granted only once, and not for more than 14 days. It shall not be extended thereafter, except once by consent of the Parties or by an order of the Court, for a period not exceeding 14 days.

16. The Claimant was granted orders on 3rd February 2020, restraining the Respondent from selling his mortgaged property.

17. 14 days in the estimation of the Court lapsed on or around 17th February 2020. After this the orders were extended by the Court and in the presence of the Parties once, on 20th February 2020.

18. As stated in Rule 17 above, such extension could not be for a period exceeding 14 days. Interim orders could not be extended for a longer period.

19. The Application was never heard *inter partes*. It cannot be presumed that because the Respondent did not file a reply to the Application for injunction, that the interim orders were confirmed.

20. The Court would agree with the Respondent that interim orders are not validly in place, and ought to be discharged, for being in violation of Rule 17 of the E&LRC [Procedure] Rules, 2016.

21. The orders on preservation of the mortgaged property are not matched with the prayers in the Claim. There is no discernible dispute concerning the mortgaged property in the Claim. The mortgaged property is being preserved, pending the consideration of which prayer in the Claim? There is no relationship between the interim orders, and the ultimate prayers in the Claim. The Claimant has not made the Court understand, why preservation of his property is necessary in his Claim for unfair termination.

22. Lastly, it is true that the Claimant took no active steps to prosecute the Claim, after the last mention in Court, on 9th March 2020. The delay of about 1 year to the date the Respondent filed the current Application, is explained. There was an emergence of a public health situation, which compelled Courts and other Public Sectors to shut down, or scale down operations. The economy has not moved at the same pace it was moving prior to the onset of the pandemic, and judicial proceedings have not moved at the same pace, contemplated by various timelines prescribed by the law, in prosecution of Claims. The Claimant can be excused for not prosecuting his Claim, when he should have.

23. The orders granted to him for interim injunction however, are defective and cannot be sustained.

It is ordered: -

a. Interim orders granted to the Claimant on 3rd February 2020 are reviewed and set aside.

b. The prayer for dismissal of the Claim for want of prosecution is declined.

c. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9TH DAY OF NOVEMBER 2021.

James Rika

Judge