



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1375 OF 2014

SIMON GITAU GICHURU PETITIONER

VERSUS

PACKAGE INSURANCE BROKERS LIMITED RESPONDENT

Mr. Mongeli for the Claimant

Mr. Omoti for the Respondent

RULING

1. The Notice of Motion dated 16th August 2014 seeks inter alia;

That pending the hearing and determination of this Cause, an injunction do issue restraining the Respondent from repossessing or in any way interfering with the quiet possession and enjoyment of motor vehicle KBJ 278 P and motor vehicle KAN 429 N.

2. Interim orders were granted pending the hearing and determination of this Application.
3. The Application is supported by grounds set out on the face of the Notice of Motion and in the Supporting Affidavit of the Claimant, Simon Gitau Gichuri sworn on 18th August 2014.
4. The nub of the Application is that the Claimant was an employee of the Respondent. In November 2013, the Claimant was diagnosed with a spinal cord tumor and was referred to specialized treatment. On 10th February 2014, the Claimant resumed work and got a salary increase on 18th February 2014.
5. On 14th April 2014, the Respondent wrote to the Claimant and told him not to report back to work until he had fully recovered.
6. On 23rd June 2014, the Respondent suspended the Claimant from employment on health grounds.
7. On 1st August 2014, the Respondent wrote to the Claimant terminating his employment summarily for gross incompetence.
8. The Claimant earned a gross monthly salary of Kshs.198,675.00.
9. The Respondent granted the Claimant two (2) loans facilities in the course of his employment with which he bought motor vehicle KBJ 278 P and KAN 429 N. The Respondent has since termination of employment of the Claimant threatened to repossess the motor vehicles due to inability by the Claimant to repay the loan balance.
10. The Respondent holds the logbooks and transfer documents for the said motor vehicles as security for repayment.
11. The Claimant prays that the Respondent be restrained from repossessing the vehicles until the

Claim for unlawful and unfair termination of employment is heard and determined.

Response

12. The Respondent responded to the Application vide a Replying Affidavit of Salome Mwangi, the Managing Director of the Respondent.
13. The Respondent admits the particulars of employment and the issuance of car loans to purchase the said motor vehicles.
14. That as at June 2011, the Claimant had an outstanding balance of Kshs. 212,344.00 in respect of motor vehicle KBJ 278 P bought for personal use by the Claimant.
15. That on 12th July 2013, the Claimant applied for 1.2 Million loan to buy motor vehicle KAN 429 N from a third party and would repay the loan in instalments of Kshs.50,000.00 per month which money he anticipated to earn from a business venture to which he would put the vehicle. The repayment was not based on his remuneration as per the application letter. The loan was granted by the Respondent and Kshs.600,000.00 was paid to the third party directly by the name Fairly Health Options Kenya and Kshs.400,000 was paid to the Claimant to refurbish the vehicle.
16. The Claimant as at 21st June 2014, had a balance of Kshs.883,067.00 on the second loan.
17. It is admitted that the employment of the Claimant was terminated on 1st August 2014.
18. The Respondent states that the termination was lawful and the Claimant is obliged to repay the loan facility offered to him in the course of his employment. The termination was not due to illness and the matter is pending before Court.

19. Issues for determination

- i. Has the Claimant satisfied the preliquisite for grant of the an injunction he seeks?

20. The Court relies on the case of **Churchil Ongalo V. Kenya Kazi Security Services Limited, Industrial Court, at Nairobi, Cause No. 741 of 2014** in which I stated thus;

*“it is well settled in **Giella V. Cassman Brown &Co. Limited [1973] E.A. 358** at 360 that an applicant who seeks interim relief has to show;*

- i. *a prima facie case with a probability of success;*
- ii. *irreparable harm would be suffered by the applicant if the relief sought is not granted;*
- iii. *the balance of convenience favours the grant of the interim relief.”*

21. In the present case, the Claimant has established a *prima facie* case that he is owed salary for days worked for the month of July 2014 in the sum of Kshs.198,675.00 and pension dues from CIC Insurance Company Limited in the sum of Kshs.636,063 which the Claimant can only be paid with the assistance of the Respondent.
22. This makes a total of Kshs.834,738.00. This is in addition to the rest of the Claims whose validity will be established upon hearing of the main suit.
23. The Court notes that the Respondent has not yet filed a statement of Reply to the Statement of Claim though the Memorandum of Claim had been served on the Respondent as at 28th August 2014, when the Advocates for the Respondent made their first appearance in Court on behalf of the Respondent.
24. In the Court's view, the Claimant has established a *prima facie* case that the Respondent was in possession of funds owed to the Claimant by the Respondent that are capable of offsetting the outstanding loan amounts owed to the Respondent by the Claimant as at June 2014.
25. The Claimant stands to suffer irreparable harm, if the two motor vehicles are repossessed by the Respondent without first making available to the Claimant his terminal benefits and / or offset the amounts the Respondent presently owes the Claimant as against the loan balance aforesaid.
26. It is in the interest of justice that the set-off is done immediately to avoid escalation of interest of the outstanding loan balance.
27. The Claimant is enjoined by the Court in this Ruling to co-operate in this respect.
28. The balance of convenience is in favour of allowing the Claimant to retain the motor vehicles and both parties to allow a set-off as against amounts that are *prima facie*, not in dispute.

29.The Application is therefore allowed and an injunction is hereby issued restraining the Respondent from repossessing or in any way interfering with the quiet possession and enjoyment of motor vehicles KBJ 278 P and motor vehicle KAN 429 N by the Claimant / Applicant pending the hearing and determination of the main suit.

30.Costs in the cause.

Dated and Delivered at Nairobi this 25th day of September 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE