



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

Civil Case 59 of 2000

JASSAN KIPTOO KOSGEI T/A TAACHASIS WHOLESALERS PLAINTIFFS/APPLICANTS

=VERSUS=

NATIONAL BANK OF KENYA LTD DEFENDANT/RESPONDENT

RULING

I have considered the Chamber Summons dated 29th September, 2005. It was filed by Katwa Kemboi Advocates on behalf of Jassan Kiptoo Kosgei t/a Tachasis Wholesalers. It is purported to be brought under section 3 and 3A of the Civil Procedure Act (cap 21) and Order 39 Civil Procedure Rules. The application seeks for two substantive orders:-

1. THAT Interim orders made on 30th April, 2005 be reinstated pending the hearing and determination of the application dated 7th July, 2003.
2. THAT an order do issue for the hearing and determination of the plaintiff's application dated 7th July, 2004 on priority basis.

The application came for hearing on 11/10/2005. Mr. Katwa for the applicant and Mr. Kuloba for the respondent made submissions before me. I have considered the submissions of Counsel for both parties, and the documents filed.

This court delivered a ruling on 9th June, 2005 in this matter. In that ruling, I erroneously referred to the application dated 7th July, 2003 as an application dated 7th September 2003. That was a typographical error. That application was actually dated 7th July, 2003. I fixed that application for hearing on 21st September, 2005 and granted orders of stay of sale up to that date up to the 21/9/2005 which was the date of hearing of the application dated 7th July, 2003.

On that day, i.e. 21st September, 2005 the matter could not be reached, as the matters listed for hearing were many. Both Counsels for the parties were present and ready to proceed with the hearing of the application. It was the workload of the court that made the application to be adjourned and not heard.

The fact that the application could not be heard on 21/09/2005 is not blamable on any of the parties. I gave the interim orders of stay in order to avoid a situation where the application dated 3rd July 2003 would be rendered nugatory. The Notice of motion dated 7th July, 2003 is for review of the orders of this court made on 4th April, 2003.

In view of the above circumstances, I consider that this is a matter in which there is justification for me to reinstate the stay orders which I gave on 9th June 2005 and were effective up to 21st September, 2005.

I therefore reinstate the stay orders against the sale, till the hearing date of the application dated 7th July, 2003, which will be heard on 15th March, 2006. Notice to issue on Counsel for the parties for the hearing on 15/03/2006.

Dated at Eldoret this 20th day of December, 2005.

GEORGE DULU,

AG. Judge.

In the presence of:-



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