



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL SUIT NO. 11 OF 2021

BETWEEN

BANK OF AFRICA KENYA LIMITED....PLAINTIFF

VERSUS

PECKER WOODS LIMITED.....RESPONDENT

JUDGMENT

1. This is an action initiated by Originating Summons. The prayer in the originating summons is as follows:-

“whether this honourable Court should be pleased to issue an order directing the defendant to grant access to the plaintiff’s authorised valuer for purposes of conducting a valuation of the parcel of land known and registered as KIAMBU/MUNBLOCK111/167 (hereinafter referred to as the security in order to ascertain the market and forced sale values.”

2. It is not denied that **BANK OF AFRICA KENYA LIMITED** the plaintiff advanced to **PECKERWOOD LIMITED** (the defendant) a loan facility which was the defendant’s property known as **KIAMBU/MUNBLOCK 111/167**. The defendant does not deny that it failed to repay the loan facility. Rather, **Simon Wagacha Kanai**, the defendant’s director, deponed in his replying affidavit that the plaintiff failed to disburse to the defendant the entire loan which act “occasioned underserved/exaggerated/unreasonable” arrears by overloading the loan account. It was further deponed by the defendant’s director that the plaintiff failed to reconcile the defendant’s accounts. The said director also deponed that the defendant had not denied the plaintiff access to the charged property.

3. This action is brought under the provisions of Section 96 and 97 of the Land Act. **Section 96** relates to the chargee’s power of sale while **Section 97** relates to the duty of chargee exercising that power of sale. **Section 97(2)** provides:-

“A charge shall before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.”

4. The plaintiff has alleged in its affidavit, and has annexed correspondence showing the same that the defendant despite repeated requests, has denied the plaintiff access on the charged property in order to carry out a valuation as required in the above **Section 97(2)**.

5. It is because of that allegation which is supported by correspondence that this Court finds there is merit in the prayer of the plaintiff.

6. In the end, the plaintiff succeeds in this action and this Court hereby grants the following orders.-

a. Bank of Africa Kenya Limited and, or its representative is granted access to the property **KIAMBU/MUN.BLOCK 111/167**, on prior notice to **PECKERWOOD LIMITED**, for the purpose of carrying out valuation of the said property.

b. The local police station to that property shall avail police officers to ensure that there will be no breach peace while such valuation is being undertaken.

c. The plaintiff is awarded costs of this suit.

JUDGMENT DATED and DELIVERED at KIAMBU this 24th day of MARCH, 2022

MARY KASANGO

Court Assistant : Mourice

For Plaintiff : Mr. Maondo

For Defendant : No appearance

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE