



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL CASE NO. 05 OF 2020

STUDERTEK POWER SYSTEM (E.A).....1<sup>ST</sup> PLAINTIFF

RICHARD GAKIME MBURU.....2<sup>ND</sup> PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF KENYA.....RESPONDENT

RULING

1. The application dated 21<sup>st</sup> April 2020 was brought under a certificate of urgency pursuant to Section 1A,1B,3 ,3A and 7 of the Civil Procedure Act, Order 40 Rule 7 and Order 51 Rule 1 and 15 of the Civil Procedure Rules seeking orders to vary set aside and /or discharge and vacate orders made on 18<sup>th</sup> March 2020 pending interpartes hearing of the application herein and the Respondent's application dated 16<sup>th</sup> March 2020.

2. The Applicant also sought that the application herein be considered alongside preliminary objection dated 16<sup>th</sup> April 2020 filed by the Applicant by way of written submissions.

3. The application is based on the grounds that that the Respondent intentionally and /or deliberately and/or knowingly failed to make full material disclosure as appertains the subject herein thereby denying the court an opportunity to make an overall factual assessment of the issues at hand when granting *ex parte* orders of 18<sup>th</sup> March 2020.

4. The Applicant claimed that there have been other previous suits between the parties herein over the same subject matter namely;

a. Meru CMCC No.33 of 2019 which was struck out in a ruling delivered by Hon.L Ambasi (CM) for the reason that the trial court lacked pecuniary jurisdiction over the subject matter.

b. Meru HCCC No.6 of 2019 that had various applications filed by the Plaintiff/Respondent which were concluded in rulings delivered on 6<sup>th</sup> June 2019 where Justice Gikonyo held, “..... **Nonetheless, purely in the interest of justice, and due to the peculiar situation herein, some interim relief is merited. I will therefore grant stay of sale of the charged property for only 90 days to enable the respondent to work out the monthly instalments payable after factoring in the penalties accruing from the default of the restructured loan. The respondent shall do so in 30 days and the 1<sup>st</sup> plaintiff shall make prompt payments thereof at the end of the month immediately following the rendering of the new instalments and thereafter at the end of each succeeding month until payment in full. Any default by the applicants in repayment of loan in accordance with this order will mean that the stay will lapse automatically. I am enjoined under the law and the Constitution to fashion relief which is appropriate in the circumstances of each case. It should be noted that I have made a finding that parties agreed to restructure the loan and therefore these orders are not re-writing the contract whatsoever. The application is allowed to the extent I have stated. Costs to the respondent. It is so ordered.**”

In a ruling delivered in 14<sup>th</sup> November 2019 the court ordered the due process to sell the security to continue and should the debtor get a buyer who can buy and pay up the debt he can introduce him to the bank. That the court is not making an order as now due process of sale should take its course and that the matter is concluded. By another ruling dated 4<sup>th</sup> of December 2019 the application by the Respondent herein was dismissed for the reasons that he had not established a prima facie case for which an injunction may be granted.

5. This court made an order for this application to be served for interpartes hearing by way of written submission and that the Respondents were to be served for them to file their response and written submissions within 7 days .A perusal of the court record shows that on 28<sup>th</sup> April 2020 Martin Maheli Advocate served a copy of order, certificate of urgency, notice of preliminary objection and replying affidavit on the

law firm of Mutegi Mugambi and Company Advocates who are acting for the Respondents herein but it appear that they have not responded to the application preliminary objection and the court is left to consider the application based on the supporting affidavit and the submissions of the Applicant.

6. In consideration of the multiple suits and applications filed by the Respondents/Plaintiffs herein I do find that the same are an abuse of the court process on the part of the Respondents as well as the advocates who failed to disclose to the court that there were other suits pending in respect to the same course of action and in fact went ahead to swear a verifying affidavit dated 16<sup>th</sup> March 2020 that there is no suit pending or concluded between the parties herein over the same subject matter in any court of law or tribunal. That in the view of this court is perjury under the Oaths and Statutory Declaration Act.

7. The application dated 16<sup>th</sup> March 2020 cannot be sustained in the circumstances and both are dismissed with cost to the Applicant. The Defendant's application dated 16<sup>th</sup> April 2020 is allowed with costs.

**HON.A. ONG'INJO**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI VIA EMAIL THIS 28<sup>th</sup> . DAY OF MAY 2020 DUE TO THE PRESIDENTIAL DIRECTIVES ISSUED ON 15<sup>TH</sup> MARCH 2020 AND SUBSEQUENTLY ON 7<sup>TH</sup> APRIL 2020 DUE TO COVID-19 PANDEMIC.**

**HON.A. ONG'INJO**

**JUDGE**