

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL APPEAL NO 28 OF 2020

PROF JULIUS ONYANGO OCHUODHO

AND 31 OTHERS.....APPLICANTS

VERSUS

KISSONY WELFARE GROUP LIMITED AND 8 OTHERS.....RESPONDENT

RULING

1. The applicants filed an application seeking orders prohibiting the respondents, **SIDIAN BANK LTD** and **KEYSIAAN AUCTIONEERS** from alienating or otherwise disposing of parcel **No. KIBOS/LONDIANI LR 757 (6286) measuring 52.5 acres**. The said property has been advertised for sale through public auction (which process is contested), and the applicant's greatest apprehension is that due to the prevailing restrictive situation caused by the C19 pandemic, there are likely to be very few bidders, and only bidders within the locality where the property is situated in the bidding. The applicants make the application in their capacity as proprietors and they maintain that there is an urgent need to safeguard their interest.

2. When the matter came up on 19/08/2020 for directions on the application, the applicant's counsel Miss Chesoo informed the court that when they were last before Sewe (J) on 5/08/2020, an order of status quo was issued and the same was extracted and served on **SIDIAN BANK** (the 7th defendant). She laments that despite this, and in an act of extreme bad faith, the 7th defendant has advertised sale of the property in the Daily Nation of 17/08/2020 reiterating their intention to sell the property. It is due to this that counsel seeks for specificity of the order.

3. It is submitted that the property is in danger of being alienated by the sale yet the applicants are in possession of the same and risk being evicted, so stay/injunctive orders are desirable. That once they are evicted, then pursuing this suit will be a purely academic exercise. It is drawn to this court's attention that whereas the loan sought is only Kshs. 7.5M, the property has been valued at Kshs. 30M, and it is their contention that stay of the sale will not prejudice the 7th defendant who can be compensated by the applicant's. The applicants express a willingness to comply with any orders this court may issue, without prejudicing the interests of the defendants. This position is shared by the 1st -5th defendant who point out that the loan given out was Kshs.20M, most of which has been paid, leaving an outstanding balance of 7.5 M.

4. The 7th respondent is opposed to any interim orders being issued, and Mr Maina on its behalf points out that when the matter was presented before Sewe (J), she declined to grant interim injunction on grounds that the sale was set for a far off date in September 2020, and she was of the view that the matter could be heard before the intended auction fell due, and that nothing has changed as the sale is due on 9th September.

5. Unfortunately the record of proceedings before Sewe (J) are not in the court record (I suspect it may have been a virtual session and the proceedings have not been downloaded), and I am hesitant to infer the meaning of status quo that the judge intended, was it to preserve the status of the property, or status of ongoing activity? If indeed the judge was of the view that the matter could be heard and determined before the date of the sale, then I would have no basis for making any alteration. I direct that the matter be listed for hearing on 2nd September 2020 before Sewe (J) who will be the vacation duty judge.

E-delivered and dated this 26th day of August 2020 at Eldoret

H.A. OMONDI

JUDGE

Present Mr. Maina

Miss Chesoo

Prof Abuya for 6th Deft