



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. APPLICATION NO 28 OF 2018

KENNEDY OTIENO NDEGE.....APPLICANT

VERSES

FAMILY BANK LTD.....1ST RESPONDENT

JACKSON WANJALA WANAMBUKO.....2ND RESPONDENT

RULING

1. The application by the Applicant herein dated 1st of August, 2018 prays that the 2nd Respondent be enjoined in this application. The same is supported by his affidavit in support sworn on the same date. He stated inter alia that he entered into a Sale Agreement with the 2nd Respondent to purchase a portion of his parcel of land known as **KITALE MUNICIPALITY BLOCK 13 /GATUA /439** on 3rd August, 2016.

2. That at the time of the said agreement the suit land was charged to the 1st Respondent for some amount and that the sale proceeds was to enable him discharge the said land. The 2nd Respondent has indeed paid the loan and his fear is that should the security be discharged then the 2nd Respondent who is yet to be a party in these proceedings shall not transfer the portion to him.

3. The 2nd Respondent did not file any response. The 1st Respondent vide the replying affidavit of **SLYVIA WAMBANI** dated 11th June, 2019 has distanced itself from the application arguing that the 1st Respondent is not privy to the agreement between the Applicant and the 2nd Respondent. That the Respondent was willing to discharge the security and hand it over to the 2nd Respondent the owner. She prayed that the application be disallowed.

4. The court has perused the application and it is of the opinion that the 1st respondent has no prejudice to suffer if the application should be allowed. This is for the simple reason that the debt seemed to have been settled whether through the proceeds from the Applicant or any other source.

5. Prima facie it seems there was some understanding between the applicant and the 2nd Respondent as per the attached sale agreement. The said 2nd Respondent has not challenged the same by filing any opposition to the application.

6. In the premises the application is hereby allowed. Let the second respondent be served with any pleadings within the next 14 days from the date herein.

7. Costs in the cause.

Dated, signed, and delivered in open court at Kitale this 24th day of June, 2019.

H K. CHEMITEI

JUDGE

24/6/19

In the presence of:-

Mr Teti for Ambutsi for Applciant

None Appearence for the Respodnent

Court Assistant – Kirong

Ruling read in open court.