



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 116 OF 2018**

**PARKASH JUTTLA ..... PLAINTIFF**

**VERSUS**

**CFC STANBIC BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SELBOURNE APARTMENTS**

**(INVESTMENT LIMITED) .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. There is a contest as to whether or not the Notice required by Section 96(1) of the Land Act was duly served on the Plaintiff herein.
2. It was agreed by consent of Counsel that the process server who purportedly served the Notice be cross-examined. This happened on 1<sup>st</sup> August, 2019. Mr. Omondi George Pongo was confident until the point when he was confronted that the Plaintiff is sick and immobilized and could not have left her house to the gate to receive service. At this point he sought to explain that the Plaintiff walked to the gate under the support of the Guard. This was a change from his earlier testimony that:  
  
“She came alone accompanied by the Guard”.  
  
The process server who was remarkably descriptive and dramatic in his testimony had earlier described the Plaintiff. I would be surprised that he was unable in the first instance to remember that the Plaintiff needed support to move from her house to the gate.
3. As to service of the Notice upon H. Kago & Co. Advocate all this court has is the letter of 27<sup>th</sup> May, 2019 from Walker Kontos Houses to H. Kago & Co. Advocates and the response thereto of 3<sup>rd</sup> May, 2019. The letter does not unequivocally acknowledge receipt of the Notice itself. Given that what is before me is word of the Counsel against the other. I am unable to hold that indeed the letter of 27<sup>th</sup> May, 2019 also forwarded the Notice.
4. While I appreciate that the Plaintiff is only an occupant and not the chargor, Section 96(2) requires an occupant such as the Plaintiff to be duly served with Notice. If no proper Notice is served then there is no compliance with the Provisions of Section 96(2).
5. For that reason auction due for tomorrow (6<sup>th</sup> August, 2019) is hereby stopped/injuncted.
6. Nevertheless the Bank still be entitled to press on with its statutory rights upon proper service of Notice under the provisions of Section 96(2) of The Lands Act. As the firm of H. Kago & Co. Advocates confirm instructions to receive Notice on behalf of the Plaintiff, the Bank is at liberty to service the Notice on the said firm. But I leave this to the wisdom of the Bank.
7. Only to that extent that the Notice of Motion dated 10<sup>th</sup> July, 2019 succeeds. Costs in the cause.

**Dated, Signed and Delivered in Court at Nairobi this 5<sup>th</sup> Day of August, 2019.**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Kago for Plaintiff

Ogunde for Defendant

Nixon – Court Assistant