

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL CASE NO.12 OF 2019

(FORMERLY OF ELC.NYAH.52 OF 2019)

DONMACK HOLDINGS LTD.....PLAINTIFF/APPLICANT

- V E R S U S -

KENYA WOMEN MICRO

FINANCE BANK LTD.....DEFENDANT/RESPONDENT

R U L I N G

Donmack Holdings Ltd, the plaintiff/applicant filed this suit against the defendant/respondent, Kenya Women Micro Finance Bank Ltd (KWFT). Together with the suit is filed a Notice of Motion under certificate of urgency dated 29/10/2019 seeking an order of temporary injunction to restrain the respondent from selling or alienating *Nyandarua/Kipipiri/4304* in exercise of the chargee's power of sale. Peter Karebe Ndonga has sworn an affidavit stating that they have been servicing the loan given to the applicant, they were not served with mandatory statutory notice and no accounts have been made of payments made to the respondent.

The file was placed before this court on 29/10/2019 afternoon and this court directed the respondent be served.

Today, 30/10/2019, Mr. Onkangi, counsel for the applicant claims to have served the Operations Manager of the respondent one Kendy at 4.30 p.m. at the Nyahururu Branch. The respondent has not appeared and the court appreciates that service was made late although the respondent should have appeared to seek time to respond.

From the application, it is not clear whether the applicant was served with the 45 days statutory notice and if so, when? The applicant has annexed a copy of the Daily Nation in which the advertisement to sell the property was made. The applicant alleges to have seen the advertisement on 25/10/2019 but evidently, the News Paper advert included an advertisement for sale of other properties on 18/10/2019. It means that the advertisement was made before 18/10/2019. The annexure PKM.3 does not show the date of the News Paper which I believe was intentionally left out. This court cannot tell when the applicant knew of the intended sale.

On record, I have also seen the first statutory notice to the applicant dated 17/9/2018.

I am convinced that the applicant was aware of this intended sale early enough and it beats logic why the applicant came to court a day before the due date for sale. The court is not seized of all the facts surrounding this transaction. I will be reluctant to grant any. Interim orders at this stage before I hear the respondents. I therefore decline to grant prayer 2 of the Notice of Motion until the matter is heard interpartes.

Dated, Signed and Delivered at NYAHURURU this 30th day of October, 2019.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Onkangi for applicant

Nyagah – court assistant