

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 4 OF 2017

SARAH NYAMBURA KUNGU.....PLAINTIFF/APPLICANT

VERSUS

JOSRICK MERCHANTS AUCTIONEERS.....1STDEFENDANT/1STRESPONDENT

SUMAC MICROFINANCE BANK.....2ND DEFENDANT/2NDRESPONDENT

RULING

1. The Notice of motion dated 12th January, 2017 seeks orders that the Honourable court be pleased to grant a temporary injunction restraining the Respondents either by themselves, servants, agents, principals or any of them from proceeding with the sale of property Title No. Kijabe/Kijabe Block 1/7689 registered in the name of Sarah Nyambura Kungu pending the hearing and determination of this suit.

2. The Application further seeks orders that the Applicant be given an opportunity to negotiate with the Respondents on how to settle the amount owed to the Respondent as a result of the loan taken by her husband.

3. The application is predicated on the grounds stated in the application and is supported by the affidavit sworn by the Applicant. It is stated that the Applicant is the registered owner of land parcel No. Kijabe/Kijabe Block 1/7689 (hereinafter suit property). That the Applicant gave out the said property as security for a loan taken by her husband for his business from the 2nd Respondent, Sumac Microfinance Bank. According to the Applicant, she was not aware that her husband was nor servicing the loan until when she was served with the notice that the loan was in arrears. It is further deposed that the said property is their matrimonial home and if the same is sold the family will be rendered homeless.

4. The application is opposed. It is stated in the replying affidavit that the Bank extended credit to one John Kung'u Mburu through a loan agreement dated 9th December, 2015. That the loan for the sum of Ksh.2,500,000/= was secured by a charge on the suit property which is registered in the name of the Applicant who signed a deed of guarantee in favour of the bank. The loan was to be repaid in thirty six (36) monthly installments comprising of both the principal sum and the interest at the sum of Ksh.39,233/= per month.

5. It is further stated that the Borrower defaulted in the payments. That by July 2016 the arrears stood at Ksh.313,273.93. Both the Borrower and the chargor were given three months Statutory Notice to clear the outstanding arrears or the property would be sold. That upon expiry of the three months, the Applicant as the chargor was served with a notice of sale by the auctioneers. That the Bank has complied with all the procedures in a bid to realize the security and should be allowed to proceed with the sale.

6. During the hearing of the application, the Applicant's counsel submitted that the property the subject of the application is the matrimonial home and implored the court to give the Applicant the opportunity to salvage the property.

7. On the other hand the Respondent's counsel argued that no reason has been given why the sale should be stopped. That the property having been used to secure a loan had become a commodity for sale. It was

further submitted that due process was followed by the Bank and there is no complaint.

8. This court gave the Applicant an opportunity to go and negotiate with the Bank but there was no settlement.

9. The Applicant has not disputed the loan amount secured through her property. There is also no complaint of lack of compliance by the Bank with any of the statutory procedures in the recovery process. The Applicant has only asked for a chance to repay the loan. The suit herein was filed in January, 2017. There is no evidence of any payments made to the Bank so far. Although the Applicant has described the property as a matrimonial home, the property became a commodity for sale the moment the Applicant appended her signature on the charge. (See for example **John Nduati Kariuki T/a Johester Merchants v National Bank of Kenya Ltd. CA Civil Appl. Nbi 306 of 2005**).

10. With the foregoing, I dismiss the application with costs.

Dated, signed and delivered at Nairobi this 3rd day of August, 2017

B.THURANIRA JADEN

JUDGE