



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL SUIT NO. 23 OF 2016**

**JOSEPH EDWARD MWIRIGI.....PLAINTIFF**

**VERSUS**

**TIMES U SACCO SOCIETY LTD.....DEFENDANT**

**R U L I N G**

1. This application is dated 13th September, 2016 and seeks orders:-

***(1) THAT this application be certified as urgent and the same be heard exparte in the first instance.***

***(2) THAT this Honourable Court be pleased to issue an order of temporary injunction to restrain the defendant, its servants, agents and employees from advertising for sale the Plaintiff's land Ref. No. ABOTHUGUCHI/KATHERI/3204.***

***(3) THAT the defendant be directed to offer reasonable terms for the loan repayment as the monthly repayment of Kshs. 76, 419 /= is unconsciable , unreasonable and excessive.***

***(4) THAT accounts be taken and sale be stayed until the hearing and final disposal of this application.***

2. The Application is supported by the Affidavit of JOSEPH EDWARD MWIRIGI, the Defendant and states :-

***(1) THAT I am the Plaintiff in respect of the above civil case.***

***(2) THAT in the year 2009, I and my wife commenced the construction of a primary school by the name of KILIMANI EQUATOR ACADEMY.***

***(3) THAT although the building of the school was not completed, we admitted the first batch of students in January, 2015.***

***(4) THAT the school is built on three parcels of land ABOTHUGUCHI/KATHERI/ 3204, ABOTHUGUCHI/KATHERI/3604 and ABOTHUGUCHI/KATHERI /1366.***

***(5) THAT the defendant's Advocates served me and my wife with a statutory notice 17/02/2016 and gave us 90 days to pay the loan arrears ( a copy of the said notice is annexed herein and marked JEM '2').***

**(6) THAT I and my wife had difficulties in running the school due to lack of funds and in September , 2015 the defendant loaned and advanced to me a sum of Kshs. 1,500, 000 for the purpose of putting final touches to the school. i.e cementing , plastering, fixing windows and furniture.**

**(7) THAT as security thereof, we pledged land parcel No. ABOTHUGUCHI/KATHERI/3240 which is registered in the joint names of myself and my wife.**

**(8) THAT the school loan was to be paid by monthly installments of sum of Kshs. 76,419 for a period of 24 months ( a copy of the loan repayment scheduled is annexed herein and marked JEM '1'.**

**(9) THAT the school did not have sufficient number of pupils and I and my wife were unable to service the loan installments.**

**(10) THAT on 17/02/2016 , we were served with a Statutory Notice given us 90 days to pay the arrears failure to which the parcel of land securing the loan would be auctioned ( a copy of the notice dated 17/2/2016 is annexed herein marked JEM '2' )**

**(11) THAT I instructed my Advocate to pray for more time ( a copy of my Advocate's letter is annexed herein and marked JEM '3').**

**(12) THAT the offer was accepted per the defendant's Advocate's letter dated 4/4/2016. ( a copy of the letter dated 4/4/2016 is annexed and marked as JEM '4').**

**(13) THAT due to the lack of students, we were again unable to service the loan and the defendant is at liberty to advertise the security for sale by public auction at any time now.**

**(14) THAT I have so far managed to pay Kshs 415,000 towards the loan repayment ( a copy of the payment receipts are annexed and marked JEM '5').**

**(15) THAT given more time and reasonable payments schedule I shall be able to service the loan.**

**(16) THAT the valuation report of the school is Ksh. 11,000,000 ( a copy of the report is annexed herein and marked JEM '6').**

**(17) THAT I and my wife would suffer irreparable damages if the school is advertised for sale in the newspaper as the reputation of the school would suffer and parents would remove the children from the school.**

**(18) THAT I make this affidavit in support of an application annexed herein.**

**(19) THAT the contents of this affidavit are true to the best of any knowledge, information and belief.**

3. It is noted that the 90 days Statutory Notice is dated 17/02/2016. This application is brought to Court 7 months later. It is submitted that around 04/04/2016, a request for more time by the Plaintiff was allowed. This is about 5 months ago. The certificate of urgency says that the urgency of the application is that the Defendant may advertise the sale of Parcel No. ABOTHUGUCHI/ KATHERI/ 3204. By the use of the word MAY, it is clear that the application is speculative.

4. I issue the following orders:-

**1. The Application is not Certified Urgent.**

*2. No prayers are granted at the ex-parte stage.*

*3. The Application to be properly served upon the Defendant.*

*4. Parties to appear before the Deputy Registrar on 05/10/2016 to canvass the application or for further directions.*

5. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-**

CA: Daniel/James

B.G KARIUKI FOR THE PLAINTIFF/APPLICANT

**P.M. NJOROGI**

**JUDGE.**