



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL CASE NO. 5 OF 2015

JOHN KAYELI OLAKA..... 1ST PLAINTIFF

ALFRED ADAN OLAKA..... 2ND PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA1ST DEFENDANT

KEYSIAN AUCTIONEERS.....2ND DEFENDANT

RULING

1. The auction sought to be stopped is scheduled for today at 11.00 a.m. and follows a 45 day notice given by the 1st Defendant on 3rd March 2015. This notice informs the Plaintiffs that the sale of Bukhayo/Mudika/3050 shall proceed unless they pay the sum of Kshs. 58,137,342/-
2. In what must be a reaction to that letter, the Plaintiff wrote to the 1st Defendant on 10th March 2015 admitting the debt and then made the plea,

“However, we write in respect of the above mentioned plot where the deceased children are residing who have no father or mother. Kindly furnish us with the necessary information concerning this particular plot to enable us make arrangements of paying this particular debt.”

3. The Plaintiffs now bring this Action complaining that the bank has declined and/or neglected to render accounts of the debt. What accounts need to be rendered for an admitted debt? is this not an afterthought by the Plaintiffs?
4. The issue of accounts being the only substantial issue raised in the Complaint, I am able to say, given the Plaintiffs’ admission of the debt, that it discloses a serious issue. It does not reveal a prima facie case with a likelihood of success. Being of that persuasion, I take the position that the Application dated 18th May 2015 seeking to injunct the intended auction does not pass muster. It fails the 1st test in *Giella vs Cassman Brown*.
5. I dismiss it with cost.

F. TUITOTT

JUDGE

20/5/2015

DATED, SIGNED AND DELIVERED AT BUSIA THIS 20TH DAY OF MAY 2015.

IN THE PRESENCE OF:

OILE.....COURT CLERK

JUMBA FORAPPLICANT/PLAINTIFF

BOKONGO FOR.....1ST DEFENDANT/2ND RESPONDENT