



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 45 OF 2015

**RAHAMTULAH RAHAMI AHMED (SUING AS THE ADMINISTRATOR AD LITEM
OF THE ESTATE OF ZUBEIDA MOORMOHAMED KHEDIWALLA..... PLAINTIFF**

V E R S U S

WILBERFORCE NJENGA AFRICAN BANKING CORPORATION LIMITED

REGISTRAR OF TITLES MOMBASA

THE ATTORNEY GENERAL.....DEFENDANTS

RULING

1. The plaintiff in filing the plaint herein also filed an interlocutory application of Notice of Motion dated 23.3.15.
2. The Notice of Motion seeks interlocutory injunction to restrain the defendants on the ground that the 1st defendant fraudulently charged the property MOMBASA/BLOCK XXIX/42 KIBOKONI to the 2nd defendant which is in the name of Zubeida Yusuf Rehemtulaa deceased. The second defendant intends to sell that property in the exercise of its statutory power of sale.
3. The Notice of Motion was fixed for hearing interpartes on 23rd June 2015 by the plaintiff. On 23rd June 2015 the plaintiff's Learned counsel being absent with no reason offered the court dismissed the Notice of Motion for non attendance.
4. The Plaintiff by a Notice of Motion dated 23rd June 2015 seeks reinstatement of the dismissed application. That prayer is based on the ground that the Learned counsel for the plaintiff mistakenly went to another court on 23rd June 2015 believing that this matter was listed before that court.
5. Although the application for reinstatement was vigorously opposed by the 2nd defendant I have examined the issues raised herein. They are indeed very serious. It is intimated that the police and Interpol are searching for the 1st defendant who is in hiding and who is suspected to have committed the fraud. Even though the explanation of absence of counsel of the plaintiff on 23rd June 2015 is not entirely satisfactory, I however form the opinion that the justice of this matter will best be served by reinstating the Notice of Motion dated 23rd March 2015. This is in keeping with the overriding principle of section 1A of the Civil Procedure Cap 21.

CONCLUSION

6. I therefore grant the following orders:

- a. **The Notice of Motion dated 23rd March 2015 is hereby reinstated.**
- b. **The interim orders issued on 30th March 2015 are hereby reinstated**
- c. **The plaintiff shall pay the 2nd defendant the costs of Notice of Motion dated 23rd June 2015.**

DATED and DELIVERED at MOMBASA this 21ST day of AUGUST, 2015.

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

C/A Kavuku

For Plaintiff:

For Defendant:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE