



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO 1785 OF 1999

WAFULA WA MUSAMIA.....PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF KENYA LIMITED....DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Notice of Motion application dated and filed on 22nd November 2013 was brought under the provisions of Sections 1A, 1B, 3A of the Civil Procedure Act, Order 51 Rules 1, 3 and 4 of the Civil Procedure Rules Chapter 21 of the Laws of Kenya and all enabling provisions of the law. It sought the following substantive orders:-

- a. **THAT this Honourable Court be pleased to grant orders for reinstatement of the suit unconditionally.**
- b. **THAT further that this Honourable Court be pleased to issue orders for lifting of the injunctive orders issued on 12th June 2000 and registered on the property L.R. No Nairobi/Block 93/1219 River Bank Estate.**
- c. **THAT costs be provided for.**

2. The grounds on which the Plaintiff relied on in support of its application were generally as follows:-

- a. **THAT the Plaintiff was the legal owner of the suit premises and had since paid off the mortgage monies that were advanced to him by the Defendant, which no longer had any interest in the said property.**
- b. **THAT the suit was dismissed while injunctive orders that had been issued by the court were still in place.**
- c. **THAT the order could only be removed or cancelled by a subsequent order from this Honourable Court.**

3. The Plaintiff swore an Affidavit on 22nd November 2013 in which he reiterated the aforesaid facts. He explained that the suit was dismissed on 7th June 2002 following an application dated 12th November 2002 by the Defendant herein.

4. His written submissions were dated 30th May 2014 and filed on 3rd June 2014. It was his argument that no prejudice would be suffered by the Defendant if the orders sought were granted as he had since

redeemed the suit premises.

5. The Notice of Motion application and Notice for highlighting of written submissions were duly served upon the Defendant as was evidenced by the Plaintiff's Affidavits of Service filed on 13th May 2014 and 5th June 2014 respectively. The court noted that the Defendant endorsed its stamp and signature on the invitations to fix the Plaintiff's Notice of Motion for hearing and the Hearing and Mention Notices thus evidencing acknowledgement of the same.

6. Having been satisfied that the said documents were duly served upon the Defendant and that the Plaintiff's application was unopposed as there were neither Grounds of Opposition nor a Replying Affidavit that had been filed by the Defendant, the court proceeded to determine this matter on the basis of the documentation that had been placed before it.

LEGAL ANALYSIS

7. The court has considered the Plaintiff's Notice of Motion application, the Supporting Affidavit and the written submissions and notes that there had been inordinate delay in the filing of the Plaintiff's present application for reinstatement of the suit and the lifting of the injunctive orders that were issued by Onyango Otieno J (as he then was) on 1st March 2000.

8. Under normal circumstances, the court would not have been inclined to reinstate the suit for the reason that the Plaintiff was guilty of laches and he had offered no or no plausible explanation why he did not move the court immediately he completed repaying the mortgage amounts.

9. However, in view of the fact that the Defendant no longer had any legal interest in the suit premises which was evidenced by its lack of participation in the matter herein even after been duly served and the Plaintiffs assertions that he had repaid the mortgage amounts in full, the court is inclined to reinstate the suit and lift the injunctive orders that were issued herein so as to meet the necessary ends of justice.

DISPOSITION

10. Accordingly, the upshot of this court's ruling is that the Plaintiff's Notice of Motion application dated and filed on 22nd November 2013 is hereby allowed in terms of Prayer Nos (2) and (3) therein. There will be no order as to costs as the said application was *ex parte* in nature.

11. The court hereby directs that the Deputy Registrar of High Court of Kenya Milimani Law Courts Commercial and Admiralty Division ensures that the Plaintiff pays the Court Adjournment Fees that he had been ordered to pay on 19th March 2014 prior to him and/or his advocates extracting the ruling and/or order herein.

12. To further the overriding objectives of Section 1A of the Civil Procedure Act Cap 21 (laws of Kenya), the court is mandated by Section 1B (1)(b) of the Civil Procedure Act to aim for the efficient disposal of the business of the court. Accordingly, as no further action will be required in this matter after the Plaintiff extracts this order, the Deputy Registrar of High Court of Kenya Milimani Law Courts Commercial and Admiralty Division is hereby directed to close the court file to avoid the matter being reflected as still pending for determination by the court.

13. It is so ordered.

DATED and DELIVERED at NAIROBI this 24th day of September 2014

J. KAMAU

JUDGE