

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 67 OF 2014

CYRUS MUSEMBI MUNYAKAPLAINTIFF

-V E R S U S-

- 1. GARAMA AUCTIONEERS**
- 2. HOUSING FINANCE COMPANY OF KENYA**
- 3. BRITAM INSURANCE (also known as BRITISH AMERICAN INSURANCE CO. (K) LTD
.....DEFENDANTS**

RULING

1. I have anxiously considered this matter and more particularly the objection raised by 1st and 2nd Defendants in respect to this Court's jurisdiction over this matter. Those Defendants submitted that this Court lacks jurisdiction to determine this matter.
2. What was before me was an injunction application. The Plaintiff by Notice of Motion dated 27th May 2014 sought an injunction to restrain the 1st and 2nd Defendants from selling by public auction Plaintiff's charged property in the exercise of 2nd Defendant's Statutory Power of Sale.
3. 1st and 2nd Defendants raised an objection that by virtue of Article 165 (5)(b) of the Constitution the Commercial Division of the High Court does not have jurisdiction to entertain this matter, because the 2nd Defendant by virtue of the charge instrument dated 2nd August 2012 obtained an interest in land. That accordingly and because of the provisions of Article 165(5)(b) of the Constitution and Section 13(1) and (2) of the Environment and Land Court Act the only Court which has jurisdiction to entertain this case is the Environment and Land Court.
4. If the objection raised is upheld it will have very great ramification not only to the case load of both the Commercial Divisions of the High Court and the Environment and Land Court but also on whether suits such as this one should be struck out for being filed in the wrong Court. In my view the issues raised by that objection are of substantial question of law requiring more than one mind.
5. Accordingly I do hereby certify that the issues herein indeed raise a substantial question of law and I do hereby refer this matter to the Hon. The Chief Justice for His Lordships empanel Judges to hear it as provided under Article 165(4) of the Constitution. This file shall therefore be forwarded to the Hon. The Chief Justice for directions.
6. Until further orders of the Court the interim injunction is hereby extended.

DATED and DELIVERED at MOMBASA this 27TH day of NOVEMBER, 2014.

MARY KASANGO

JUDGE