

REPUBLIC OF KENYA

High Court at Bungoma

Civil Case 19 of 2000

OMARI KABURU

.....PLAINTIFF

VERSUS

INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION..... DEFENDANT

RULING

The plaintiff/applicant has sought orders in an application dated 5th December 2012. The orders sought are

- a).Service be dispensed with in the first instance.
- b).That it pleases the court to order a restriction to be placed on E. Bukusu/S. Kanduyi/4026 pending hearing and determination of this application.
- c).The application dated 18.3.2005 be struck out as counsel who filed the same is not properly on record.
- d).That any purported sale or auction or at all that was conducted on the 7.1.2003 be annulled and/or declared void and that rents from the tenant one Lawrence Sifuna as from the 7.11.2003 to date be deposited in court at rate of Kshs. 16,000/= per month.
- e). That upon vacation of the sale or treaty, an injunction be issued restraining the defendants by themselves, agents and or servants from attempting to dispose, transfer or sell till the suit herein is heard and determined.
- f).Costs be provided for.

The application was filed on 1st February 2013. On 14th February 2013 a hearing date was given from the registry fixing the application for hearing on 18.3.2013.

on 18th March 2013, there was no appearance for both respondents. The applicant sought to have the prayers granted as the application is unopposed. I have looked at the affidavit of service filed on record.

The affidavit sworn by the process server, one Charles Alumasa at paragraph 2, says he received hearing notice to be served upon the firm of Kamau Kania & co. advocates P.o. Box 45519 – 00100 (GPO) Nairobi. On 27th February he travelled to Nairobi town to the firm of Kamau Kania advocates. He does not disclose the physical building where according to him he located the said firm of advocates. Further at paragraph 4 he avers that he met a clerk who accepted service and rubber stamped copy of his hearing notice presumably with rubberstamp of firm of Kamau Kania & co Advocates. The hearing notice however is stamped by M.C. Mulwa advocate. That cannot be treated as the same as Kamau Kania & co. advocates. No relationship has been disclosed between the firm of Kamau Kania and M.C. Mulwa. This to me was not proper service.

Secondly the prayers sought in the application particularly prayer (d) cannot be granted at an interlocutory stage by way of application. The sale was done in 2003, the applicant wants this court to cancel the same 10 years later by way of application. The court finds this as very misleading as the status on the ground is unknown. Prayer (c) also refers to a totally different application that was not listed for hearing. It will

be condemning the applicant in application dated 18.3.2005 unheard thus contravening the rules of natural justice.

Finally the applicant has not demonstrated that he served the present application on the 1st respondent. In the final analysis, I decline to grant the orders sought by the applicant ex parte. The applicant is directed to serve the application properly on the respondents and fix the same for hearing for the full determination in the presence of both parties.

RULING DATED, SIGNED, DELIVERED AND READ in open court this 28th Day of March 2013.

A. OMOLLO

JUDGE.