



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**CIVIL SUIT NO. 506 OF 2008**

**PAUL KARUGA NJUGUNA ..... PLAINTIFF**

**-VERSUS-**

**HOUSING**

**FINANCE COMPANY**

**OF KENYA LIMITED .....1<sup>ST</sup> DEFENDANT**

**PENINAH NJERI HASSAN..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me is a Notice of Motion application dated 13<sup>th</sup> January 2012 brought by the Plaintiff/Applicant under Order 50 Rule 6 of the Civil Procedure Rules and Sections 3A, 1A and 1B of the Civil Procedure Act. The application seeks orders for extension of time for filing of a Notice of Appeal by the Plaintiff against the ruling of the in this matter dated 14<sup>th</sup> December 2011. In the alternative, the Plaintiff seeks an order of this court for this suit to be fixed for hearing on a priority basis within 90 days.

2. The application is supported by the Plaintiff's affidavit sworn on 13<sup>th</sup> February 2012 in which he states that the ruling dated 14<sup>th</sup> December 2012 was delivered in the absence of his advocate who only learnt of the ruling sometime in February 2012. He states that extension of time within which to file a Notice of Appeal should be extended as the said ruling did not address the issues he raised in his application of 27<sup>th</sup> August 2008 to which the ruling related. In the alternative, the Plaintiff states that he is ready to have the suit heard in full on its merits on a priority basis.

3. At the hearing of the application, counsel for the Plaintiff Ms. Othieno submitted that the Plaintiff has a right of appeal and should be allowed extension of time within which to file his Notice of Appeal. She submitted that sale of the property by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant was fraudulent but that the same had never been canvassed at a full hearing due to the multiplicity of applications, hence the alternative prayer for the sit to be fixed for full hearing.

4. In response, counsel for the 2<sup>nd</sup> Defendant Mr. Issa submitted that the application for extension of time within which to file a Notice of Appeal should be made at the Court of Appeal pursuant to Rule 4 of the Court of Appeal Rules. With regard to the alternative prayer for the suit to be fixed for hearing, Mr. Issa

told the court that the Plaintiff had not prepared the suit for hearing as no discovery had been done and no issues had been agreed upon between the parties.

5. Mr. Issa further notified the court that the 2<sup>nd</sup> Defendant's application dated 23<sup>rd</sup> February 2009 was also fixed for hearing. The application sought summary judgment on the 2<sup>nd</sup> Defendant's counterclaim seeking grant of vacant possession of the suit property. He urged the court to give an order for vacant possession as the property had been sold and transferred to the Applicant and the Plaintiff was now a trespasser to the property.

6. On the application by the 2<sup>nd</sup> Defendant for orders of vacant possession, Ms. Othieno opposed the application on grounds that it was based on the assumption that sale of the suit property was legitimate yet it was fraudulent. The Plaintiff should therefore be allowed to prosecute the suit before the orders sought could be granted.

7. For the 1<sup>st</sup> Defendant, Ms. Muli supported the application by the 2<sup>nd</sup> Defendant. She left the Plaintiff's application to the Court's discretion.

8. I have carefully considered the applications based on the affidavit evidence tendered and the submissions by counsel for the parties.

9. With regard to the Plaintiff's application for extension of time within which to file a Notice of Appeal, I note that the application is not grounded upon any substantive Order of the Civil Procedure Rules but is based on the court's inherent jurisdiction. In my view, the application is so cushioned because I do not think that this court has any jurisdiction to grant an extension of time within which to file a Notice of Appeal. The jurisdiction of this court upon delivery of a ruling is limited to applications for stay pending appeal under Order 42 Rule 6. Any application relating to the filing of an appeal including an application for extension of time should be brought under the Court of Appeal Rules. I therefore concur with counsel for the 2<sup>nd</sup> Defendant Mr. Issa that the application for extension of time in the instant matter should be made under Rule 4 of the Court of Appeal Rules.

10. With regard to the prayer for this suit to be fixed for hearing on a priority basis, I note that the parties have not complied with the pre-trial procedures stipulated in Order 11 of the Civil Procedure Rules. In that regard, the suit is not mature for setting down for hearing. I therefore direct that the parties do comply with pre-trial procedures within 30 days from today and that the suit be fixed for hearing on a priority basis within 14 days upon full compliance.

11. Turning to the 2<sup>nd</sup> Defendant's application dated 23<sup>rd</sup> February 2009, I am surprised that the same was fixed for hearing as my perusal of the ruling of Khaminwa J dated 14<sup>th</sup> December 2011 reveals that the ruling addressed that application and indeed allowed it in terms of prayers 1 and 2 with no orders as to costs. The application is therefore determined and this court has no jurisdiction to revisit the merits of the application. The 2<sup>nd</sup> Defendant is at liberty to enforce the said orders as the same have never been stayed.

12. For these reasons, the Plaintiff's Notice of Motion dated 13<sup>th</sup> February 2012 fails on prayer 1 and is allowed in terms of prayer 2 subject to the directions of the court spelt out in paragraph 10 of this ruling. Costs shall be in the course.

**IT IS SO ORDERED.**

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE 2012.

**J.M. MUTAVA  
JUDGE**