



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CIVIL CASE NO. 122 OF 2009

ROTICH KIMATUI PLAINTIFF

VERSUS

EQUITY BANK LIMITED 1ST DEFENDANT
PHYLLIS CHEROTICH CHEMWENO 2ND DEFENDANT
ROBERT WAWERU MAINA 3RD DEFENDANT
(TRADING AS ANTIQUE AUCTIONS LTD.)

R U L I N G

The plaintiff filed suit to have the 1st defendant restrained from exercising its statutory power of sale over his property known as Eldoret Municipality Block 9/17 (Border farm)/384. The 2nd defendant engaged in certain financial irregularities whilst she was an employee of the 1st defendant as a consequence of which she took a loan to repay the moneys lost by the 1st defendant. That loan was secured by a charge over the plaintiff's above property and his guarantee. It would appear that the plaintiff was an innocent and unwarned chargor and guarantor but nevertheless he became such chargor and guarantor upon execution of the necessary documents to that regard. He did not benefit from the advances to the 2nd defendant who is his daughter – in-law who appears to have conspired with her husband, the plaintiff's son, to induce their father into an unknowing and perhaps unwilling chargor. Naturally the plaintiff had to bring the present suit to have his property secured and not much blame can be attributed to him.

This whole saga came into being due to the 2nd defendant's criminal actions which not surprisingly she was called upon to account for by the relevant authorities. She and her husband benefited from the moneys from the 1st defendant. None of anything that happened in this case would have so happened had the 2nd defendant conducted herself according to the Law. She did not and that resulted to injury to the plaintiff and other parties such as the 1st and 3rd defendants. She was the principal and only borrower and she and her husband benefitted from the money. She should not have her cake and eat it. Everything that went wrong and caused expense to any parties herein happened because of the auctions of the 2nd defendant. She must legally and morally (even if the law is not the custodian for morals) answer for her actions. She must pay the plaintiff's and the 1st and 3rd defendants' costs. I accordingly so order.

DATED AND SIGNED AT ELDORET THIS 31ST DAY DECEMBER, 2010.

P.M. MWILU
JUDGE

DELIVERED AND SIGNED AT ELDORET THIS 26TH DAY OF JANUARY, 2011.

**F. AZANGALALA
JUDGE**

In the presence of;

Advocate for Plaintiff
Advocate for Defendants
Court Clerk

**F. AZANGALALA
JUDGE**