



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**CIVIL SUIT NO. 584 OF 2010**

**NEO FURNITURE MART LIMITED .....PLAINTIFF**

**VERSUS**

**CAROLINE WAIRIMU WANJIHIA.....1<sup>ST</sup> DEFENDANT**  
**DAVID NJAU NGUKU .....2<sup>ND</sup> DEFENDANT**  
**ELIZABETH NJERI NJAU .....3<sup>RD</sup> DEFENDANT**  
**TOP NOTCH CONSTRUCTION LIMITED..... 4<sup>TH</sup> DEFENDANT**  
**NAIPOSHA HOLIDAY HOMES LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

The Applicant in the Notice of Motion dated 22<sup>nd</sup> July 2011, is the Plaintiff in the suit. On 23<sup>rd</sup> June 2011, I allowed the Plaintiff's application for injunction dated 25<sup>th</sup> August 2010, and ordered, inter alia, that an injunction do issue against the Defendant/Respondent in terms of prayers 3 of the respective Chamber Summons and that the Applicant do deposit into court a sum of Kshs. 8,250,000/= as security, directing that the same be paid within 30 days of my Ruling.

The Applicant has now moved the court under **Section 3A** and **95** of the **Civil Procedure Act** and **Order 50 Rule 6** of the **Civil Procedure Rules** praying that the period for the payment of security be extended by a further 90 days.

The Defendant/Respondents have objected to the application on the strength of Grounds of Opposition filed on 26<sup>th</sup> July 2011, in which they state that:

- 1. The Applicant is guilty of inexplicable and inordinate delay.**
- 2. There is no material upon which the discretion of the court can be exercised.**
- 3. The application lacks merit.**
- 4. Allowing the application will unduly prejudice the Defendants particularly bearing in mind that Plaintiff obtained favourable orders in a suit over a property it has contributed nothing whilst the Defendants continue to service loans on a venture that has thus far been frustrated by the Plaintiff.**

Oral submissions were recorded in court earlier today and the same have been duly considered. The Applicants rely solely on the grounds set out in the body of the application and the Supporting Affidavit. They state that the time given by the court is "rather short, considering (that) the sum of money to be deposited is substantial". They say that they have commenced the process of raising the security and

have exhibited a letter dated 8<sup>th</sup> July 2011, from an entity calling itself **SUMAC CREDIT LIMITED** in which a conditional offer for financial accommodation was made to the Applicants, indicating that the Credit Committee of the said entity would be meeting in the last week of July to consider the Applicant's request for credit.

The interested party has no objection to the application before court, and for that reason did not make any representations at the hearing, having stated their position on 26<sup>th</sup> July, 2011. Counsel for the Respondent has argued that there is no material placed before this court to assist the court exercise its discretion to extend the time within which the Applicant should deposit the security ordered. Without offering any evidence by way of affidavit, counsel for the Respondent attempted to discredit the entity that the Applicant has approached for funds, saying that it is not licensed. I do not consider that to be a sound ground without evidence. Counsel also submitted that the Applicant having not demonstrated that it has met the conditions for the loan cannot be said to have approached the seat of equity with clean hands.

In my considered view, Grounds of Opposition No.s 1 and 2 are answered by the filing of the exhibits "B" annexed to the Supporting Affidavit of John Muhara which shows that the Applicant started the process of raising the security deposit on 29<sup>th</sup> June 2011, which is 6 days after the court's ruling. The financing process is still ongoing. That to me is material enough for consideration in the exercise of this court's discretion. Regarding Ground 4, I am of the view that the Respondent's attempt to challenge the Ruling of the court is misplaced. I need not go into it, being of the view that to do so would be to sit on appeal over my own ruling.

My order for security did not contain a default clause and was made by the court suo moto, not at the Respondent's request. I am unable to understand therefore, the Respondent's objection, seeing that they do not contend that the security is inadequate. The court has unfettered discretion to extend the period, provided that I am satisfied there is good ground for so doing. Considering the facts, as presented before me, I am satisfied that the application has merit although, notwithstanding my finding on Ground 1, the request for a period longer than 30 days ought to have been made when the Ruling was delivered. This notwithstanding however, I am inclined to extend the period within which the security deposit should be paid with a further 60 days, since the Applicant has already had 30 days and has taken steps to raise the same. I need not restate the reasons for which I found it necessary and appropriate to grant the injunction herein. The same having not been challenged, it follows therefore that the Respondents cannot challenge the court's discretion as regards the time within which security should be furnished.

Accordingly I allow the application and do hereby extend the period in question by a further 60 days from the 23<sup>rd</sup> of July 2011. In default of compliance, the restraining orders granted to the Plaintiff/Applicants shall stand vacated.

**DATED, SIGNED AND DELIVERED at NAIROBI THIS 27<sup>TH</sup> DAY OF JULY, 2011.**

**M.G. MUGO**  
**JUDGE**

In the presence of:

Ms. Kamande  
No appearance

For the Applicant  
For the Respondents