



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 205 of 2009

WILSON K. NDUNGU.....APPLICANT/PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA.....REPOENDENT/DEFENDANT

RULING

The applicant seeks in this application restraining order to stop the respondent from selling, auctioning or interfering in any way with the property known as L.R. NJORO/NJORO BLOCK 2/82 (NJOKERIO) (suit property) pending the determination of this suit.

The applicant obtained a loan facility in the sum of Kshs.700,000.00 on the security of the suit property, registered in the name of the applicant under the Registered Land Act. It is the applicant's contention that he made regular payments until the post election violence which followed the 2007 General Elections that forced him to close down his business. He approached the respondent to reschedule the payments, which request was rejected. That the respondent is now demanding Kshs.732,000.00 yet he has paid Kshs.340,000.00.

In reply, the respondent has conceded through its Branch Manager, Molo, that the applicant operated his loan account well until March, 2008 when he defaulted. That his current account was overdrawn, attracting a higher interest of 21% p.a as opposed to the loan rate of 18%p.a. When this was brought to the applicant's attention, he undertook to pay Kshs.100,000.00 before 11th August, 2008, but this was not honoured. The respondent has now set in motion valuation process which will culminate in the sale of the suit property.

I have considered the application and foregoing arguments. It is common ground that the applicant obtained a loan from the respondent. It is also not in dispute that he has defaulted in the repayment. Although the respondent has not taken immediate steps to realize the security, there is no doubt that that is the direction it is heading. The applicant is therefore justified in being apprehensive and in bringing this application. For instance, the respondent has issued a letter dated 11th July, 2008 demanding immediate repayment of Kshs.574,926.65 which was due at the time, within thirty (30) days of the date of that letter. The respondent has also conducted a valuation of the suit property. There is also a notice dated 23rd February, 2009 issued under **section 74** of the **Registered Land Act**.

The sole question for determination in this application is whether the applicant is entitled to an order of injunction. In other words, has he demonstrated a *prima facie* case with a probability of success; does he stand to suffer irreparable loss which cannot adequately be compensated in damages if the injunction is not granted and finally, is the balance of convenience in his favour? The last question is only answered by the court if it is in doubt.

I have already stated that the applicant's indebtedness to the respondent is not in doubt. The applicant has attributed the indebtedness to the post election violence which disrupted his resource flow. He has also disputed the amount being claimed. Interventions that are likely to affect the economy such as the post election violence of 2008, unless accepted by the bank, cannot be a basis or consideration for the grant of an injunction.

The simple answer to the second issue is similar, that a dispute on accounts cannot be a basis for grant of an injunction. See J. L. Lavuna & Others Vs. Civil Servants Housing Co. Ltd. & Another, Civil Application No.NAI.14/95. See also John Nduati Kariuki t/a Johester Merchants Vs. National Bank of Kenya, Civil Application No.306 of 2005.

In the result, I find that the applicant has not demonstrated a *prima facie* case with a probability of success at the trial.

The value of the suit property has been estimated at Kshs.2m. There is no suggestion that the respondent will not be able to compensate the applicant. The interest is escalating and the respondent stands to lose hence the balance of convenience tilts in favour of the respondent.

For these reasons, the application must fail and is hereby dismissed with costs.

Dated, Signed and Delivered at Nakuru this 22nd day of January, 2010.

W. OUKO
JUDGE