



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 590 of 2009**

DUNCAN CHUHI MUNGAI.....PLAINTIFF

VERSUS

**KIAMBU UNITY FINANCE CO-OPERATIVE UNION1ST DEFENDANT
GLADSOM AUCTIONEERS LIMITED2ND DEFENDANT**

RULING

1. Duncan Chuhi Mungai filed this suit against the defendants on 2nd July 2009. Simultaneously with the filing of the suit, a chamber summons application was filed under the provisions of order 39 rules 1, 2 and 3 of the Civil Procedures Rules seeking for interim orders of injunction. That application was subsequently withdrawn on 2nd December 2009. The first defendant filed a defence denying the allegations contained in the plaint.
2. On 14th January 2010, the 1st defendant filed a chamber summons application under order VI rule 13(b) and (d) of the Civil procedure Rules seeking for orders that the plaint be struck out and the suit be dismissed with costs to the 1st defendant. This application is supported by the grounds that the plaintiff is truly indebted to the 1st defendant having obtained an overdraft facility in May 2005 which was secured by the plaintiff's plaintiff property known as KIAMBU/KANUNGA/1815. The loan was to be repaid within one year in equal monthly installments. The plaintiff failed to service the loan and as at 30th June 2008, the loan outstanding and due to the 1st defendant was Ksh.968,393.00/-.
3. The plaintiff acknowledged the indebtedness and sought indulgence to pay the outstanding loan by monthly installments of Ksh.5000/- per month. The 1st defendant contends that they have not instructed the auctioneers to auction the plaintiff's property. There was a notification which was issued by the auctioneer but it was done in error and it was subsequently withdrawn. The plaintiff was advised of that cancellation and despite making promises to pay the outstanding loan; the plaintiff has not done so. The plaintiff's claim in this suit is pre mature because there is no threat for sale of his property and the suit should be struck out. This application was served upon the respondent. However he did not appear during the hearing, thus there was no opposition to this application.
4. I have considered the application as well the plaint. The matters averred by the 1st defendant are not controverted. It is evident that the suit premises are registered in the name of the plaintiff as per the certificate of search issued on 5th February 2009. The property is charged to the 1st defendant, and since the notice issued by the auctioneers was withdrawn there is no threat of sale of the suit premises. Accordingly, I am satisfied that the suit by the plaintiff is not only premature but also discloses no cause of action.
5. Accordingly the suit is hereby struck out. The 1st defendant shall have the

costs of the application.

RULING READ AND SIGNED ON 26TH MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE