



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**Civil Case 97 of 2009**

TERESA NYATETE ..... PLAINTIFF/APPLICANT  
V E R S U S  
HOUSING FINANCE  
COMPANY LTD. .... DEFENDANT/RESPONDENT

**R U L I N G**

By her chamber summons application dated 12<sup>th</sup> June, 2009 the applicant is seeking an order of injunction restraining the respondent from selling land parcel No. **ISUKHA/SHIRERE/2978** by Public auction pending the hearing and determination of this suit. Mr. Manyoni, counsel for the applicant relied on the application and the applicant's supporting affidavit sworn on 12<sup>th</sup> June 2009. Counsel submitted that the applicant was not served with the mandatory statutory notices.

Miss Sawe, counsel for the respondent opposed the application. Counsel submitted that the statutory notice was served through the last known address which is the same address used by the applicant in her documents filed in court. Counsel further submitted that the applicant made another attempt to stop the auction by filing Kakamega Chief Magistrate Case No.115 of 2007 which suit was dismissed. There is no dispute that the applicant was advanced a loan and that her property was used as the security and therefore no prima facie case has been established by the applicant.

In her supporting affidavit, the applicant admit that she took a loan from the respondent. Her contention is that equipments belonging to her husband were stolen during the post election violence and this affected her business. She contends that she was never served with the requisite statutory notice.

The replying affidavit sworn by June Njoroge, the Assistant Manager, legal services for the respondent indicate that the applicant's account as at 1<sup>st</sup> January, 2009 stood at KShs.3,754,552. A statutory notice was sent to the applicant on 24<sup>th</sup> august 2004 and an auction was to be conducted on 26<sup>th</sup> April, 2007. The applicant filed Kakamega CMCC 115 of 2007 which suit was dismissed and the auction was re-scheduled for 19<sup>th</sup> June, 2009.

From the pleadings herein I am satisfied that the applicant was served with the requisite statutory notice. The applicant took a loan from the respondent and fell in arrears. The contention that the applicant's business was affected by the post election violence has not been proved. I do find that no prima facie case has been established to warrant the grant of the orders being sought. The applicant herein is trying to use the court to avoid meeting her financial obligation to repay the loan. The application dated 12<sup>th</sup> June 2009 lacks merit and the same is dismissed with costs.

**SAID J. CHITEMBWE**

**J U D G E**

*Delivered, dated and counter signed by Isaac Lenaola this 15<sup>th</sup> day of April, 2010*

**ISAAC LENAOLA**

**J U D G E**