



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Case 424 of 2004

GITAU MICHUNU PLAINTIFF

VERSUS

STANDARD CHARTERED BANK LTD. DEFENDANT

R U L I N G

The plaint in this suit was filed in Court on 28th July, 2004. The Plaintiff sought against the Defendant –

- (a) *An injunction restraining the Defendant by itself, its agents or servants from disposing of by way of Public Auction of the suit premises known as L.R. No. Ruiru/Kiu/Block 6/246 until the hearing and determination of this suit or further orders of the Court.*
- (b) *A declaration that the sale of the suit premises scheduled for 30th July, 2004 was illegal for non compliance with the provisions of the law.*
- (c) *Costs of the suit and interest thereon at Court rates.*

Contemporaneously with the plaint, the Plaintiff also filed an application by Chamber Summons of even date under **Order XXXIX Rule 1 (b)** of the **Civil Procedure Rules** seeking, *inter alia*, an order that this honourable Court do grant an order of temporary injunction to restrain the Defendant by itself, its servants or agents or otherwise howsoever from proceeding with the sale by Public Auction scheduled for 30th July, 2004 by Messrs Dolphin Auctioneers of L.R. No. Ruiru/Kiu/Block 6/246 until the final determination of this suit or further orders of the Court.

The application was heard before the Hon. Justice Mutungi and in his ruling dated 8th July, 2005, the learned Judge found that no notification of sale was effected upon the Plaintiff as required by law, and on that note alone, the intended sale was invalid. The Judge also found that the Statutory Notice provided for under the **Registered Land Act** was not served upon the chargor, that is the Plaintiff, and on those two grounds held that there was no valid exercise of the power of sale, and therefore it could not be said that the chargor's equity of redemption could be extinguished in any sale conducted in breach thereof. He further held that without compliance with those conditions precedent, the purported sale would be void and liable to be nullified at the instance of the chargor. Upon those findings, the Court granted temporary injunctive orders restraining the Defendant by itself, its servants and/or agents, from proceeding with the sale by Public Auction of the suit property until the final determination of this suit.

When this suit came for full hearing, Counsel for the respective parties were agreed that in the light of the above findings, the suit was effectively compromised. In the circumstances, the only issue for determination was who should bear the costs of the compromised suit. In their written submissions, both parties referred to **Section 27 (1) of the Civil Procedure Act** which states as follows –

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid ...

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order.”

Despite the findings of the Hon. Justice Mutungi on the interlocutory application for injunction, the suit is still on record. It is still alive. If it proceeds to hearing, the same issues which Justice Mutungi found in the Plaintiff's favour will arise and, no doubt, will still be determined in his favour yet again. In the circumstances, I don't share the Defendant's submission that each party should bear its own costs. Instead, I find that the suit was compromised in the Plaintiff's favour and where a suit is compromised in favour of one party, it is that party, generally, who ought to win the costs of the suit.

For these reasons, I direct that **HCCC No. 1124 of 2005** be and is hereby marked as compromised with costs to the Plaintiff.

It is so ordered.

Dated and delivered at Nairobi this 21st day of May, 2010.

L. NJAGI
JUDGE