



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

CIVIL SUIT NO. 58 OF 2008

GILBERT NYABWEGI MANYANGE.....PLAINTIFF

VERSUS

CONSOLIDATED BANK.....RESPONDENT

RULING

The plaintiff sought an interlocutory injunction to restrain the defendant, its servants and/or agents from disposing of a property known as **L.R. No. Wanjare/Bokeire/975**, hereinafter referred to as “**the suit property**”, or interfering with his quiet enjoyment of the same in any manner whatsoever.

In his affidavit in support of the application, he stated that he is the registered owner of the suit property. In 1984 or thereabout he was advanced a loan of Kshs. 60,000/= by Business Finance Company Limited which was secured by a charge over the suit property. He alleged that he had paid the entire loan and nothing was outstanding. On 17th April 2008 he was served with a notification of sale of the suit property which was issued by the defendant. He alleged that the defendant is a stranger to him since the aforesaid loan had been advanced to him by Business Finance Company Limited. The defendant is now demanding Kshs. 960,114.75. In his view, the intended sale of his property is unlawful since there is no privity of contract between himself and the defendant. The plaintiff further stated that he is residing on the suit property together with his family members and he stands to suffer irreparable loss if the order of injunction is not granted as the suit property may be sold.

The defendant filed a replying affidavit through **Julius Mwaniki Gikonyo**, a Remedial Officer. He stated that on 8th February 1984 the defendant’s predecessor in title, Business Finance Company Limited, granted the plaintiff a loan facility amounting to Kshs. 60,000/=. The deponent annexed to his affidavit a legal notice dated 25th July, 2002, which showed that all the undertakings of Business Finance Company Limited among other companies were vested in the Consolidated Bank of Kenya Limited. The loan was repayable within 24 months by equal monthly installments of Kshs.3,054/=. The plaintiff charged the title to the suit property to secure the said facility. The plaintiff defaulted in repayment and the loan balance as at 17th April 2008 stood at Kshs. 960,114.75. It was therefore not correct that the plaintiff had fully repaid the loan. The defendant is thus exercising its statutory power of sale.

The parties filed their respective submissions which I have duly considered.

The aforesaid Legal Notice which was not challenged by the plaintiff clearly demonstrates that the Consolidated Bank of Kenya Limited took over all the undertakings of Business Finance Company Limited and therefore it has **locus standi** to demand repayment of the loan balance from the plaintiff.

There is no evidence that the plaintiff repaid the loan that was advanced to him. It is clear from the annexures to his affidavit that the only sum that he paid was Kshs. 3,054/= which was sent by his letter dated 11th June, 1984. As at that date the account was in arrears of Kshs. 6,108/=.

On 26th July, 1984, the lender wrote to him stating that he was in arrears of Kshs.9,162/=. There is no evidence that any other repayment was made. In the circumstances, the plaintiff has no basis of challenging the defendant's exercise of its statutory power of sale, a statutory notice having been served on him.

The plaintiff's application is without any merit. He has not established a *prima facie* case as against the defendant. Consequently, I dismiss the application with costs to the defendant.

DATED, SIGNED AND DELIVERED AT KISII THIS 29TH DAY OF JULY, 2010.

D. MUSINGA

JUDGE.

29/7/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Oguttu for Mr. Mereka for the Respondent

Mr. Nyagwencha for Mr. Mongeri for the Applicant

Court: Ruling delivered in open court on 29th July, 2010.

D. MUSINGA

JUDGE.