

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

Civil Case 450 of 2008

RUKIA BINTI MOHAMED

(Thro' Jackton Maritim Kiplangat)PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD. DEFENDANT

R U L I N G

The application dated 7/8/2008 seeks restraining orders against the defendant to stop alienating, disposing or in any way adversely dealing the plaintiff's plot No. L.R. Nairobi/209/4401/1451 Makadara Estate pending the hearing and determination of this suit.

The grounds upon which the application is based is that the plaintiff suffers from a condition of unsound mind and the defendant has threatened to sell the aforesaid property on account of a loan procured TO one Alfred Kipkemboi Maritim. That the plaintiff is 98 years old and currently resides on the same plot. She has disputed being a guarantor of the loan during the period she is of good health.

It is fair and just to restrain the defendant from selling the property.

This suit is brought by Jackton Maritim Kiplangat as her next friend and son. The supporting affidavit confirms that the plaintiff is 98 years old and suffers from mental illness. There is evidence that she has been attending KNH since 1999 and a medical report dated 3/7/2002 and also another one dated 20/1/2001 are exhibited.

It is also shown that she the proprietor of plot L.R. Nairobi 209/4401/1451 and that on 5/7/2007, the plaintiff was served with 3 months' statutory notice of sale by public auction and the auctioneers' notice was served upon her on 3/6/2008. The auctioneers' notice was addressed to the wrong principal debtor by the name of Solomon Maritim instead of Alfred Kipkemboi Maritim.

It is also disclosed that the son of the plaintiff, Alfred Kipkemboi Maritim, is the one who took a loan from the defendant and which loan was guaranteed by the plaintiff with her title as security. And now since the plaintiff became sick, she cannot understand how her title found its way to the defendant bank. The said Alfred Kipkemboi Maritim has refused to pay his loan.

The defendant has never submitted to the plaintiff any statement of account and in the circumstances; they seek a restraining order against the defendant.

I have examined the plaint and the facts are as told in the supporting affidavit and the prayers are permanent injunction to restraining the defendant from realizing its security.

I have examined this matter and I notice and it is admitted that the statutory notice was served and the

auctioneers' notification of sale was also issued. There is in the letter dated 17/1/2008, advocate Noah Kipton Bygon who promised the defendant that the debt (loan) would be paid in order to save the property. Since that time, no progress has been made to make payment. The amount allegedly due is Kshs.4,683,373/85.

This is a contractual matter between borrower, principal debtor and guarantor. They agreed to make payment to repay the loan. They do not deny that the loan was given to the principal debtor who is of sound mind to-date and who happens to be a son the aged guarantor. They have not denied the loan, neither have they made any repayments since the demand was made.

In the circumstances, this application has no merit. The bank cannot be stopped from exercising its power of sale when statutory notice has been properly served. The application is dismissed with costs to the respondent.

DATED and DELIVERED at Nairobi this 26th day of January 2009.

JOYCE N. KHAMINWA

JUDGE