

REPUBLIC OF KENYA
IN THE HIGH COURTS OF KENYA
AT MOMBASA

Commercial Civil Suit 36 of 2008

JANE GAKII MARETEPLAINTIFF

VERSUS

CFC BANK LIMITED (NOW CFC STANBIC BANK LTD).....DEFENDANT

R U L I N G

Jane Gakii Marete, the plaintiff herein, took out a summons pursuant to order XXXIX rules 1,2,3 and 4 of the Civil Procedure in which she sought for an order of temporary injunction to restrain C.F.C. Bank Ltd (now C.F.C. Stanbic Bank Ltd.), the defendant herein from advertising, selling by public auction or otherwise title No. Mombasa Block XI.790 until this suit is heard and determined. The plaintiff filed a supporting affidavit she swore on 25th September 2008. The defendant filed the replying affidavit of Hannah Ndarwa sworn on 14th November to oppose the summons. With leave of court, the plaintiff also filed a supplementary affidavit she swore on 9/12/08 in response to the replying affidavit. When the summons came up for interpartes hearing on 16th December 2008, learned advocates recorded a consent which was approved by this court to file and rely on written submissions.

I have considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the application. I have further taken into account the written submissions and the authorities cited by learned counsels. The plaintiff avers that she pledged her title to secure financial facilities from the defendant advanced to Jaki Enterprises Ltd. The plaintiff claims that she learned from a friend that her property had been advertised for sale by public auction in the Daily Nation Newspaper of 8th September 2008. The advert took her by surprise as she had not been served with the 3 months statutory notice. She also claimed that she was not served with the 45 days redemption notice by the auctioneer or with any notification notice. On the basis of the above reasons the plaintiff urged this court to grant her the order sought.

The defendant on its part admitted having caused the property to be advertised for sale by public auction when the plaintiff fell into arrears. The defendant stated that the plaintiff was served with the statutory notices and the auctioneer's redemption of sale. Annexed to the replying affidavit of Hannah Ndarwa are notices issued by the auctioneer. The aforesaid notices are stated to have been served by registered post. I have also persuaded a copy of the statutory notice dated 30.08.2002 which gave the plaintiff 3 months to settle the debt or else the defendant would realize the securities. There is evidence of copies of certificate of postings showing the notice was actually posted to the plaintiff. The notice gave the plaintiff 3 months from the date of service to redeem the property. It would appear the plaintiff did not comply with the terms of the notice. This prompted the defendant to instruct Thaara Auctioneers to advertise the property for sale by public auction in the Daily Nation of 8th September 2008. After a careful consideration of the submissions and material placed before me I am not convinced that the plaintiff has shown a prima facie case with a probability of success. There is evidence that the defendant served the requisite statutory notices hence there is no need to restrain the defendant from exercising its statutory power of sale. I find the summons dated 25.09.2008 without merit. It is dismissed with costs to the defendant.

Dated and delivered at Mombasa this 8th day of April 2009.

J. K. SERGON

J U D G E