



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 315 of 2007

**NYALI CONSTRUCTION & ELECTRICAL SERVICE
LIMITED.....PLAINTIFF**

VERSUS

**BARCLAYS BANK OF KENYA LTD.....
DEFENDANT**

RULING

I have heard counsel fully on this application. The plaintiff has alleged that the property advertised for sale although stated to belong to the plaintiff by views is in fact not that of the plaintiff.

I have also seen the advert. It is dated 12th July 2009 and states that the intended sale would take place on 27th July 2008 now past.

The property advertised is described as Mombasa/Block/28. The description differs from the plaintiff's property which is Mombasa Block 1/28.

Prima facie therefore, there is a clear error with regard to the date of the intended sale and a clear misdescription of the suit property. It cannot be gainsaid that if the plaintiff's property is sold pursuant to the said advert it would obviously be irregular.

In the premises, I find and hold that the plaintiff has established a prima facie case with a probability of success at the trial.

With regard to the 2nd condition for the grant of an interlocutory injunction, I am persuaded that although there is no doubt that the plaintiff's property has a value. Yet the plaintiff is entitled to lose the property in a lawful manner. The defendant cannot be allowed to flout the Law merely because it has the ability to pay whatever damages that the court will award.

On the balance of convenience, I am persuaded that the same tilts in favour of granting the injunction, the defendant still holds the suit property as security. There is no allegation that it is deteriorating in value since no replying affidavit was filed.

In the end, I am satisfied that the orders sought by the plaintiff are deserved. Accordingly the application

is allowed in terms of paragraph 3 thereof. In the event that the auction has already been held I order that the defendant be restrained from further processing of the sale or transferring or leasing, charging of in any way whatsoever and howsoever from dealing with the plaintiff's property on the basis of the advertisement appearing in the Sunday Nation of 12th July 2009.

This order is granted on the condition that the applicant shall file an undertaking as to damages within the next five (5) days.

Costs shall be in the cause.

Orders accordingly.

F. AZANGALALA

JUDGE

27TH JULY 2009

Gikandi:

I pray for a certified copy of proceedings and ruling.

Court: _____

A certified copy of the proceedings and ruling to be furnished to counsel upon payment of the requisite court fees.

F. AZANGALALA

JUDGE

27TH JULY 2009