



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

Ciivil Case 89 of 2007

KUDJETA WAMUGO NJIGORU.....PLAINTIFF

VERSUS

CONSOLIDATED BANK LIMITED.....1ST DEFENDANT

WATTS ENTERPRISES.....2ND DEFENDANT

RULING

Application dated 12th day of July, 2007 seeks orders to restrain the defendants from selling by public auction the Applicant's pieces of land namely Ngandori/Kirigi/2646 and 2665 pending hearing and determination of this suit on the grounds that the amount now demanded Shs.14, 414, 110.45 is illegally demanded and that the Applicant will suffer irreparable damage if the family land is sold in unjust circumstances. The supporting affidavit shows that the amount borrowed was only Shs.100,000/= and the demand now is Shs.14,000,000/=

I have perused the application, the first Defendant confirms that it is entitled to Shs.14,414, 110.45 as at 7th June 2007 and that there is another suit pending in Embu HCC No. 54/2003. It is a principle of law pronounced by our courts from the time that the bank lender holder of security shall not be prevented from exercising its right of charge to sell security because of dispute of accounts. However in this case the amount demanded is so excessive considering the amount borrowed. There is no sufficient evidence from the bank to show that the amount outstanding is as claimed. The Bank does not exhibit the item of binding. In these circumstances, it is my finding that the court is entitled to interfere to save the property which is said to be family property pending hearing and determination of this suit.

The application is allowed orders granted as prayed.

Costs in the cause.

Dated this 11th February, 2008.

J. N. KHAMINWA

JUDGE

11/2/2008

Khaminwa – Judge

Njue – Clerk

Ms Njeru

Read in open court.

J. N. KHAMINWA

JUDGE