



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**MISC APPLI 55 OF 2005**

**EQUITY BUILDING SOCIETY ..... 1<sup>ST</sup> APPLICANT**

**GITAU NGANGA T/A**

**SHEFLO AUCTIONEERS ..... 2<sup>ND</sup> APPLICANT**

**PHILIP KIMANI GITUMA ..... 3<sup>RD</sup> APPLICANT**

*Versus*

**JERVASIO GITHOGORI NGATIA ..... RESPONDENT**

**RULING**

The Applicants in this matter have applied for an order for the court to extend the period in which consent of the land control board can be obtained in respect of property **OTHAYA/KIANDEMI/780**. The background to this matter is that Jerevasio Githogori Ngatia obtained financial facility from Equity Bank limited and as security charged his property OTHAYA/KIANDEMI/780. After default in payment of that facility Equity Bank in exercise of chargee's powers sold that property to Philip Kimani Gatuma. Subsequent to that sale Ngatia engaged Equity Bank Limited in various court actions and during that time the period of obtaining consent from the land control bond expired. The injunctions that were sought by Ngatia did not succeed. Even the further attempt to get orders from the high court also did not succeed. The applicant stated that the chargor will not be prejudice if the order that is sought is granted. Ngatia did file a replying affidavit and in that affidavit he mentioned the pending suits before the lower and high courts. In mentioning them Ngatia did not say that any orders of stay had been granted. He however stated that if the order sought is granted it will render his suits nugatory. In his submissions the advocates for Ngatia argued that the application before court in incompetent because the Land Control Board being a Government body the correct order to have been sought was for certiorari.

I will start by considering the last argument raised. As I understand the application before court the prayers therein clearly show what the applicant seek is an extension for the purpose of seeking consent from the Land Control Board. **Section 8(1)** of the Land Control Act provides as follows:-

***“An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement of the controlled transaction by any party thereto:***

***Provided that the High court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any as it may think fit.”***

That section provides this court with power to extend the period when consent can be obtained. The applicant have shown that the delay was due to the chargor making various applications before court and thereby obtaining temporary orders restraining the applicants. This submissions was not refuted by the chargor. I find that the application before court is merited and the same is hereby granted in the following terms:-

***1. That the court does hereby extend the time / period for which the land control board should issue consent to Equity Bank Limited and Philip Kimani Gatuma in respect of Othaya/Kiandemi/780 to a period of six months from this date hereof.***

***2. The costs of the application dated 3<sup>rd</sup> may 2007 are awarded to the applicants as against JEREVASIO GITHOGORI NGATIA.***

***DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF MARCH 2008.***

**MARY KASANGO**

**JUDGE**