



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

**Civil Suit 105 of 2007**

**GEORGE ROMBORA KWARIA ..... PLAINTIFF**

**VERSUS**

**HOUSING FINANCE K. LTD ..... DEFENDANT**

**RULING**

In the application before me the applicant seeks orders for the maintenance of the status quo. The dispute between the parties relate to a loan obtained by the applicant from the respondent on the security of parcel of land No. NTIMA/IGOKI/3738.

By his own admission, the applicant states that he defaulted in the repayment of the loan due to his interdiction from employment and the heavy load of school fees for his children. This default prompted the respondent to debit the applicant's account with colossal default charges and penalties. The applicant is now faced with a public auction of the security by the respondent in the exercise of the latter's statutory power of sale.

The applicant on his part has engaged a valuer to place a price on the charged property and also with the help of a firm called Interest Rates Advisory Centre; he has caused the interest rate charged on his account to be recalculated. He has averred finally that once the interest is recalculated he will be in a position to pay the outstanding amount.

In response to the foregoing, the respondent argues that the orders sought are unknown in law and therefore the application is incompetent. It is further stated that since the applicant is in arrears, there is no reason to stop the respondent from exercising its statutory power of sale. The application is expressed to be brought under sections 3 and 3A of the civil Procedure Rules. It is not clear why the applicant elected to follow this route whereas all he seeks is to restrain the respondent from exercising its statutory power of sale. Of course, I can only guess that the reason for invoking the court's inherent powers is because of the relief sought in the application, an order for the maintenance of status quo. As I understand it there cannot be a substantive order of status quo, although generally such orders are issued but only where there is a prayer for such relief as injunction, inhibition or stay of execution, the purpose of which is to preserve a certain situation.

An order for the maintenance of status quo, where the status quo in question is not specified may be difficult to supervise or even execute. Be that as it may, the very object of legislation granting a chargee a statutory power of sale would be negated if the courts were to interfere with the exercise of that power unless, of course there is an allegation of fraud or improper exercise of the power of sale.

In **J.I. Lavuna & Others V. Civil Servants Housing Co. Ltd and another** Civil Application No. NAI. 14/95 Kwach J.A stated:-

***“I have always understood the law to be that a court should not grant an injunction restraining a mortgagee from exercising its statutory power of sale solely on the ground that there is a dispute as to the amount under the mortgage. The legal position on this point is to be found in Halsbury's Laws of England, Volume 32, 4<sup>th</sup> Edition at paragraph 7255.”***

Halsbury's states that:-

***“A mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or the mortgagor has begun a redemption action or the mortgagor objects to the manner the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, the amount which the mortgagee claims to be due to him, unless on the terms of the mortgage the claim is excessive”*** (Emphasis added).

The terms of the mortgage or the charge itself not annexed to the application. The court cannot, therefore, in the absence of any evidence, assume that the interest or the default charges levied are excessive or contrary to the charge.

For these reasons, this application fails and is dismissed with costs to the respondent.

Dated and delivered at Meru this 29<sup>th</sup> day of April. 2008.

**W. OUKO**

**JUDGE**