



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 416 of 2006

GEOFREY MACHARIA MURAYA PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY (K) LTD DEFENDANT

RULING

(1) At some point in 1999, Geoffrey Macharia Muraya, the Plaintiff, borrowed the sum of Kshs.600,000/= from Housing Finance Company of Kenya Ltd. (“HFCK”), the Defendant, which was secured by a charge on his property on Plot Title No. NAIROBI/BLOCK III/907 (“the suit premises”). The debt was to be repaid by monthly instalments of Kshs.11,048/= until payment in full.

(2) It is the Plaintiff’s case that at some point he decided to redeem his title and he raised the instalments to Kshs.105,002/= per month and paid off the balance of the debt within eight months. The Defendant then released the title deed to the Plaintiff.

(3) The Plaintiff then asked the Defendant to execute a discharge of charge but the Defendant refused to do so claiming that the Plaintiff was still in arrears to the tune of Kshs.2,276,824.60 as at the 9th August 2006. The Defendant also says that although the Plaintiff’s Account was credited with Kshs.105,002/= every month for eight months totaling Kshs.840,000/=, all this was done in error through some mistake or inadvertence in their office.

(4) The Plaintiff stood his ground and maintained that the debt had been repaid in full. The Defendant then issued a statutory notice and moved to exercise its statutory power of sale. It was to stop the sale of the suit premises that the Plaintiff filed this suit to obtain a permanent injunction against the Defendant and for an order compelling the Defendant to discharge the charge.

(5) In the Chamber Summons filed on the 28th July 2006 the Plaintiff seeks a temporary injunction to restrain the Defendant from selling or advertising the suit premises for sale.

(6) Interim orders of injunction would appear to have been granted on the 14th August 2006 by Ochieng, J but when the Plaintiff failed to prosecute his application on the 4th October 2006, the learned Judge declined to extend such orders. Thereafter, it is evident from the record that the Plaintiff has made little effort to prosecute the application and it was not until the Plaintiff was served with fresh notices to

redeem the charge that he brought the Chamber Summons filed on the 30th April 2008 now before me seeking a temporary injunction to restrain the Defendant from selling the suit premises until the hearing and determination of the application filed on the 28th July 2006 and/or the suit.

(7) I have considered the application in conjunction with the Defendant's Grounds of Opposition filed on the 14th May 2008 and the Defence. In the Statement of Defence filed on the 23rd August 2006 and the Replying Affidavit of Joseph Kania, the Legal Services Manager of the Defendant, sworn on the 11th August 2006, the Defendant dismisses the Plaintiff's claim as totally frivolous and an abuse of the process of the court and urges the court to dismiss the application.

(8) With great respect, I am afraid I am not persuaded and cannot accept the submission of Mr. Sagana, learned counsel for the Defendant. It is not good enough for the Defendant to say that the Plaintiff was inadvertently credited with a total of Kshs.840,000/= over a period of eight months. The Defendant, Housing Finance Company of Kenya Ltd., has been in the mortgage business in Kenya for as long as anyone can remember and a mistake of that magnitude on its part must be properly and fully investigated. And while that is being done, the Defendant cannot be allowed to put up the Plaintiff's property for sale.

(9) Consequently, a temporary injunction will issue in terms of prayer No.2 in the Chamber Summons filed on the 30th April 2008 pending the hearing of the suit or further orders. The costs of the application will be in the cause.

So ordered.

Dated and delivered at Nairobi this twenty-third day of May 2008.

P. Kihara Kariuki

Judge.