

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL DIVISION

CIVIL SUIT NO. 359 of 2004

JOYCE MUKUHI NJENGAPLAINTIFF

VERSUS

EQUITY BUILDING SOCIETY LTD.

PATRICT KUNGU KIMATA *t/a* MARCHET AUCTIONEERS

AGNES WANJIRU MUCHAIDEFENDANTS

RULING

Notice of Motion dated 26/3/08 filed by the 3rd defendant/applicant seeking orders:

- (a) that the suit be struck off with costs for being an abuse of due process and**
- (b) in the alternative the plaintiff be ordered to deposit in a joint account rent arrears and/or future rents at the rate of Kshs.25,000/= per month with effect from 1st day of June 2004 until the hearing and determination of this suit**
- (c) costs of this application be provided for.**

On the ground that the applicant was the highest bidder at the auction and applicant was not a party to the preparation and registration of the charge and that the applicant is now registered as proprietor of the property on 31/5/2004, the respondent has lost her right of redemption and her remedy now is in damages. The supporting affidavit indicates that the applicant was highest bidder in the auction conducted in respect of suit property and she is now registered as proprietor. But that the plaintiff/respondent and her agents and servants remain in the occupation of the suit property and that the properties in the area fetch a minimum Kshs.25,000/= rent per month and it is only fair that the respondent do pay rents for the occupation of the applicant's property.

I have perused the record and considered the applicants arguments. It is my view that she should continue in the suit since she is an interested party and the outcome may affect her interests.

According to the authorities tendered by the parties it appears that there are various opinions as to the status of documents prepared by non-advocates. If the suit was to succeed the remedy for applicant would be against the first defendant.

In the circumstances, I dismiss the application with costs in the cause.

DATED and DELIVERED at Nairobi this 29th day of August 2008.

JOYCE N. KHAMINWA

JUDGE