



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

Civil Case 1203 of 2006

GEORGE GIKUBU PLAINTIFF

VERSUS

HOUSING FINANCE (K) LTD..... DEFENDANT

RULING

The Applicant has filed a Notice of Motion dated 9th November, 2007 under order XLIV Rules 1 (1) and 6 of Civil Procedure Rules and Section 3A of Civil Procedure Act.

It seeks to review this court's orders (*sic*) given on 22nd October, 2007.

It also seeks further orders namely:

“(b) that this Honourable court do submit (*sic*) it's ruling on its jurisdiction to hear the 3rd Defendant's Preliminary objection and/or re-hears (*sic*) the issue of its jurisdiction.

(c) That the 3rd Defendant's Preliminary Objection be dismissed.

(d) That cost of this application be paid by the 3rd Defendant/Respondent.”

At the time of hearing of the application, the Applicant limited his submissions based on grounds 1 and 9 set forth on the face of the application. They are:

“(a) There is an error apparent on the face of the record on the ground that the court did not address the issue of its jurisdiction when it delivered its ruling on 22nd October, 2007.

(b) On the unregistered conveyance by Mortgagee dated 24th April, 2006 Section 100(1) (a) of Government Lands Act (Cap 280) forbids all civil courts from receiving evidence of the sale or transfer of land unless the sale or transfer is effected by a registered document. At page 3 and 4 of the Ruling, this court relied heavily on evidence which sprang from a Preliminary Objection which in turn was predicated upon unserved statement of Defence and the unregistered conveyance by Mortgagee dated 24th April, 2006”.

On the reading of those grounds, it shall be evident that the issues raised in those grounds are issues of law based which are prayed to be reviewed. It is trite law that this court cannot review its determination

made on points of law.

While I am dwelling on my inability to grant certain orders, I shall also find that order B which seeks to rehear the issue of jurisdiction, cannot be granted.

Even apart from the aforesaid, I must stress that what I heard and determined, were the points raised by the 3rd Defendant which were, in my view, in the nature of the preliminary objections, to the Plaintiff's Chamber Summons dated 27th July, 2002. And in short what was contended was that there is no suit in existence after the Notice of withdrawal was filed by the Plaintiff and thus the court has no jurisdiction to hear any application in the non-existent suit.

While considering the said points I advisedly refrained from dealing with any facts averred or pleadings filed in respect of the said application before me and that is what is complained of by the applicant herein. He alleges that I did not go into the issue of an alleged forged document, which could have ousted my jurisdiction.

If I was wrong in my determination of the preliminary points, the Applicant has a right to file an appeal which leave I readily granted after the Ruling in question was delivered.

I can only state that I shall be crossing all the limits and infringing the dictates of law, if I allow the application for review before me.

In the premises, I dismiss the application with costs.

Dated and signed at Nairobi this 5th December, 2007.

K. H. RAWAL

JUDGE

5.12.07