



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT 196 OF 2006**

**FESTUS H.K. MNG'AMBWA ..... PLAINTIFF**

**- V E R S U S -**

**HOUSING FINANCE COMPANY OF KENYA LTD. .... DEFENDANT**

**RULING**

By a charge dated 3<sup>rd</sup> December 1990 the plaintiff charged his property situate in Wundanyi and known as **L.R. NO. Werugha/Wundanyi/951** to the defendant to secure a sum of shs. 270,000/- advanced to him. He claims in his plaint that despite the payment of that sum together with interest under the charge the defendant is threatening to sell the property. He has therefore filed this suit and sought an injunction to restrain the defendant from selling the property and an order to compel the defendant to discharge it. Simultaneously with the filing of the suit the plaintiff also filed an application for a temporary injunction to restrain the defendant from selling the property until this suit is heard and determined. This ruling is on that application after an inter parte hearing.

Presenting the application Mr. Maosa, counsel for the plaintiff submitted that the defendant has charged penalty interest, which is not provided for in the charge document and demanded an exorbitant sum thus making it impossible for the plaintiff to redeem the charged property.

On his part Mr. Wameyo for the defendant submitted that this application has no merit. In his view the only point raised is the amount due which on the authority of several cases cited including the case of **Shavida & Others – Vs- The Delphis Bank Ltd, Mombasa HCCC. No. 111 of 2003** cannot be the basis of granting an injunction.

The main issue raised in this suit is the charging of penalty interest which the plaintiff terms illegal, as it is not provided for in the charge document. The defendant stated in several documents annexed to the replying affidavit sworn on its behalf including the letter to the plaintiff dated 31<sup>st</sup> May 1993 and the statement dated 17<sup>th</sup> November 1994 that it would and actually did charge penalty interest on outstanding arrears.

The major issue that will have to be decided at the hearing of this suit therefore is whether or not the defendant is entitled to charge penalty interest. Having not heard evidence I cannot at this stage decide either way. However having considered the matter I am satisfied that the plaintiff has made out a prima facie entitling him to an order of injunction which I hereby grant him in terms of prayer 2 of his application dated the 31<sup>st</sup> October 2006 until this suit is heard and determined. The costs of the application shall be in cause.

**DATED and delivered this 12<sup>th</sup> day of June 2007.**

**D. MARAGA**

**JUDGE**