

REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE 649 OF 2000

JAMES NJUGUNA NG'ANG'A PLAINTIFF/RESPONDENT

VERSUS

HOUSING FINANCE COMPANY OF (K) LTD DEFENDANT/APPLICANT

RULING

In this Notice of Motion dated 9th November 2006, the Applicant, who is the Defendant in this suit, is seeking orders to have the injunction issued by this court in this suit on 13th April 2000 be discharged with all the consequential orders thereto.

The Applicant says that this is because the grant and pendency of the said injunction is hindering him from exercising his statutory power of sale to realize lawful security and recover monies due to him; and that the injunction has ceased to serve the ends of justice;

and that the existence of the said injunction obstructs the expeditious disposal and determination of the main suit; that there are numerous bidders expressing their interest in the suit property and should be allowed to buy the property; and that the Plaintiff Respondent is not servicing the debt.

The Plaintiff/Respondent does not accept that he is not servicing the debt and I find that what he says in reply casts doubt upon the claims made by the Defendant/Applicant as it appears that the Defendant/Applicant has been actively contributing to the situation the Defendant/Applicant is now complaining about for there have been continuous negotiations leading to some agreements, application to dismiss the suit for want of prosecution and withdrawal of such application, exchange of correspondence and other associations of the parties so that in the end the Defendant/Applicant does not appear to be before this court with clean hands and as a result Mr. Simiyu, counsel for the Applicant before me, could not rebut what M/S Wekesa, counsel for the Respondent told me in reply during the hearing of this Notice of Motion.

The above being the position, the said Notice of Motion is hereby dismissed with costs to the Respondent.

Dated this 23rd day of July 2007.

J. M. KHAMONI

JUDGE