

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Suit 58 of 2006

JOEL KIPSEWER KENDAGOR.....PLAINTIFF

=VERSUS=

KIRIGIRIRO SELF HELP GROUP.....1ST DEFENDANT

KENYA COMMERCIAL BANK.....2ND DEFENDANT

JOHN KAMAU KIMANI.....3RD DEFENDANT

SAMUEL KAMAU MUNGA.....4TH DEFENDANT

PETER NJOROGE WAWERU5TH DEFENDANT

RULING

I have considered the application, affidavits and submissions. The Plaintiff pleaded that he was not served with the Statutory Notice before the Sale as required by Section 74 of the Registered Land Act. The Defendant claimed it has served the Statutory Notice.

The alleged Statutory notice is dated 20th August 1998. The purported sale of the property was 6th – 29th August, 2007 – 7 years later. In the Replying Affidavit, there was no proof of service of the said notice. The notice is given 7 years later. The validity of this notice is questionable.

On a balance of probability, I find that in the absence of the Notice, the Plaintiff's case has a high probability of success.

I do hereby grant the Interim Orders as sought in prayers 2, 3 and 5 of the application dated 2nd May 2006 with costs to the Plaintiff and the Second - Fifth Defendants. Defendants are a Self-Help Group comprising of Wanainchi. This Court usually lets the matters be heard on its merits. However, I think that justice requires that this Court proposes and requests the Kenya Commercial Bank Limited to consider canceling this sell and refunding the money put by the Self Help Group to alleviate their suffering. The Bank will not wholly be prejudiced as it can re-issue the Statutory Notice afresh and then sell the property. Otherwise, this suit will pend yet it may not be for the benefit of any party. This is only a suggestion as this Court is not totally without feelings and this is a case where even the Bank can intervene as matter of social responsibility.

DATED AND DELIVERED AT ELDORET ON THIS 3RD DAY OF DECEMBER 2007

M.K. IBRAHIM,

JUDGE.