



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 656 of 2004**

**BERNARD KURIA WAWERU.....PLAINTIFF**

**VERSUS**

**SAVINGS AND LOAN KENYA LTD.....DEFENDANT**

**R U L I N G**

On 12<sup>th</sup> October, 2005 the following consent order was recorded:-

*“By consent -*

- 1. The Plaintiff do pay KShs.7.2 million to the Defendant within sixty days of today.***
- 2. Matter to be mentioned on 16/ 12/05 with a view to recording further orders.”***

When the matter was mentioned on that day the Plaintiff had not paid the KShs. 7.2 million. He thereafter filed the present application by chamber summons dated 22<sup>nd</sup> December, 2005 in which he seeks the main order that he be granted a further period of ninety (90) days to pay the sum of KShs. 7.2 million in full and final settlement of the Defendant’s claim, and that in default execution to issue. The application is said to be brought under section 3A of the Civil Procedure Act and all other enabling provisions of the law. The grounds for the application are:-

- (a) That the Plaintiff offered KShs. 7.2 million in settlement of this suit and that the Defendant accepted the same.***
- (b) That at the time the parties were negotiating the Government of Kenya was the lessee of the subject property where it housed police officers and their families.***
- (c) That the Government of Kenya has expressed an interest to buy the property.***
- (d) That before ministerial approval for the purchase could be given the Cabinet was dissolved.***
- (e) That if the proposed sale to the Government is completed part of the proceeds of the sale in the sum of KShs.7.2 million may be paid directly to the Defendant.***
- (f) That therefore, the Defendant will not be prejudiced at all by the extension of time sought.***
- (g) That it will serve the ends of justice to grant the extension.***

There is an affidavit sworn by the Plaintiff in support of the application. In it, it is deponed that rent amounting to KShs.100,000/00 is collected upon the property and that the same could be paid directly to the Defendant towards the KShs.7.2 million pending completion of the proposed sale of the property to the Government. It is further deponed that the Government has offered to buy the property for KShs. 12 million.

The Defendant opposes the application upon the grounds of opposition dated 29<sup>th</sup> December, 2005. Those grounds are, *inter alia*, that the Plaintiff has not shown any good ground for the prayer sought; and that the application has not been made in good faith and is meant only to cause further delay in complying with the consent order of 12<sup>th</sup> October, 2005. There is no replying affidavit filed by the Defendant.

I have considered the submissions of the learned counsels appearing. It is to be noted that the Plaintiff was a borrower of monies lent and advanced by the Defendant upon the security of the property in question, L.R. No. RUIRU TOWNSHIP/369. In the plaint the Plaintiff seeks the reliefs of an injunction to restrain the Defendant from selling the property in exercise of its statutory power of sale and an order for an account. There is no counterclaim by the Defendant. During the hearing of the application I was informed by learned counsel for the Plaintiff that the sum borrowed by the Plaintiff was KShs. 3 million and that he has already paid KShs.4.2 million. This is also pleaded in the plaint. Having agreed to pay a further KShs.7.2 million the Plaintiff shall have paid the total sum of KShs.11.4 million upon the sum borrowed of KShs.3 million. This was not denied by the Plaintiff's learned counsel.

In my view the Plaintiff has shown a lot of good faith by offering to settle the matter as already agreed. KShs.7.2 million is not a small sum of money, and it is not surprising that the Plaintiff was not able to raise it as he had expected. The fact that the Cabinet was dissolved and that therefore ministerial approval of the proposed sale of the property to the Government could not be obtained as anticipated was a matter beyond his control. The Cabinet has since been reconstituted, and the Plaintiff expects that the proposed sale will now proceed to completion. I think its only just that he be given the extension sought so that he can sell the property to the Government, raise the KShs.7.2 million to be paid to the Defendant and also have something left for himself. The ninety day extension sought is not a long time. If the Defendant were to realize the security it would probably need as long as to do so. Besides, the property may not realize KShs.12 million if sold by public auction in realization of security.

Having considered all matters placed before me I hold that it is in the interests of justice to accord the Plaintiff the extension sought. I will therefore allow this application and extend the period limited by the consent order of 12<sup>th</sup> October, 2005 by ninety (90) days from the date of delivery of this ruling. I will further order that the rent collected by the Plaintiff upon the property, being KShs.100,000/00 per month, be paid to the Defendant for the next three months with effect from the rent for February, 2006, the same to go towards the aforesaid sum of KShs.7.2 million. The Defendant shall have the costs of this application. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY, 2006.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 27<sup>TH</sup> DAY OF JANUARY, 2006.**