



REPUBLIC OF KENYA

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

Civil Suit 456 of 2005

FRANCIS MUREITHI GITUKU.....PLAINTIFF/APPLICANT

VERSUS

PATRICK KIARIE KAGWANJA1ST DEFENDANT

BARCLAYS BANK OF KENYA LTD.....2ND DEFENDANT

REGISTRAR OF TITLES.....3RD DEFENDANT

KANGERI WANJOHI t/a KINDEST AUCTIONEERS.....4TH DEFENDANT

R U L I N G

The 2nd defendant, in exercise of its statutory power of sale sold property L.R. NO. 12489/23, which prior to the sale was registered in the plaintiff's name. The property was sold to the 1st defendant.

The plaintiff filed this suit to challenge the aforesaid sale and also sought an injunction. The court's finding on that application was that the 1st defendant's title could not be attacked.

What followed in this matter was an application filed by the 1st defendant seeking vacant possession of the suit property from the plaintiff. The court by its ruling delivered on 15th March 2006 granted orders vacant possession, thereof, giving the plaintiff 30 days to vacate.

The plaintiff did not vacate and by the present application, by chamber summons dated 13th April 2006 seeks an extension of a further 60 days to find alternative house to move to.

The plaintiffs application is based on the grounds that he resides on the suit property with his family and also thereon raises cattle, goats, sheep and chicken under a zero grazing system. That since the order was issue for him to vacate the suit property he has made frantic efforts to find alternative shelter for his family and livestock. That he has not succeeded to get alternative accommodation particularly because of his animals.

The application was vigorously opposed by the 1st defendant. 1st defendant submitted that the plaintiff moved to the court of appeal to challenge this court's orders and it was only after the court of appeal failed to certify his matter as urgent that he returned to this court with the present application. 1st defendant said that the plaintiff's application should fail for none disclosure of the application in the court of appeal.

1st defendant also argued that the plaintiff had failed to give any justifiable reasons why this Honourable court should enlarge for him time to vacate.

The plaintiff by his present application seeks this court's exercise of its discretion in his favour. The plaintiff, and I agree with the arguments of the 1st defendant needed to have placed before court material why this court should act in his favour. The plaintiff did not indeed tell the court what effort if any he has put to find alternative accommodation, if indeed the animals are a hindrance to his move, he fails to state what he intends to do about them. In other words the court finds that the plaintiff has done nothing towards his obedience of this court's order of 15th March 2006.

With regard to the plaintiff's move to the court of appeal, the court finds that the plaintiff was challenging the refusal of this court to grant an injunction and collateral to that challenge he sought stay of execution of the order for vacant possession. It does seem that application for stay of this court order for possession is still alive. It does not sit well with this court that on being unsuccessful to have the court of appeal certify the application as urgent that the plaintiff would turn backwards and come to this court. I accept 1st defendant's submission that the plaintiff, in making the present application, was obligated to make disclosure of that application pending in the court of appeal.

The court's finding, in totality, is that the plaintiff is not deserving of this court's exercise of its discretion in his favour and it is obvious to the court that the plaintiff does not intend to obey the order of this court on vacating the suit property. The plaintiff ought to be aware that the court is empowered to ensure that its orders are obeyed.

The end result is that the plaintiff's application dated 13th April, 2006 is dismissed with costs to the 1st defendant.

MARY KASANGO

JUDGE

Dated and delivered this 11th May 2006.

MARY KASANGO

JUDGE