



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

**Civil Suit 224 of 2006**

**FRANCIS KIGO NJENGA .....**  
**PLAINTIFF**

**VERSUS**

**HOUSING FINANCE COMPNAY OF KENYA .....1<sup>ST</sup>**  
**DEFENDANT**

**KINYANJUI WANJUII t/a DOLPHIN AUCTIONEERS..... 2<sup>ND</sup>**  
**DEFENDANT**

**R U L I N G**

When the plaintiffs application dated 24<sup>th</sup> April 2006 came up for hearing, the defendant’s who had been served, failed to attend court. The matter proceeded for hearing on 4<sup>th</sup> May 2006 and the court granted two prayers, one for injunction and the second for taking accounts. The court reserved its reasons which reasons are now contained in this ruling.

The plaintiff is the registered owner of plot No. NGONG/TOWNSHIP BLOCK 2/411 situated at Ngong township (hereinafter called the suit property).

The plaintiff offered to the defendant his aforesaid suit property, as security for a loan facility granted on or about April 1999.

The said loan was rescheduled in December 2002 whereby the period of repayment was increased by five (5) years and the monthly repayments were varied to kshs 64, 364/-. The plaintiff averred that the rescheduling agreement did not provide for payment other charges, yet the 1<sup>st</sup> defendant has debited such various charges into his account.

That the plaintiff paid kshs 2, 844, 600 between 1<sup>st</sup> January 2003 to 31<sup>st</sup> March 2005, whilst the

amount that was due from his was kshs 2, 510, 196/-. That,. Accordingly, the plaintiff has over paid in his account by an amount of kshs 334, 404/-.

The plaintiff stated that in March 2003 the 1<sup>st</sup> defendant varied the monthly instalments to kshs 66, 954/-.

Thereafter the plaintiff appointed an accountant to audit his account with the 1<sup>st</sup> defendant and that audit revealed; that there were illegal and unexplained charges totalling kshs 558, 643. 18; that the account had been over paid by kshs 334, 404. 00 and that therefore the account was not in arrears.

Plaintiff further submitted that the statutory notice issued by the defendant was illegal since there were no arrears in his account. The plaintiff therefore sought an injunction to stop the sale of the suit property, which the 1<sup>st</sup> defendant, through the 2<sup>nd</sup> defendant had advertised for sale by auction.

The court did not have the benefit of hearing from the defendant, since, as stated herein before, they failed to attend. Accordingly the submissions made on behalf of the plaintiff and the evidence in the plaintiff's supporting affidavit remained unchallenged.

The court, therefore, granted prayer No. (c) and (d) in the chamber summons dated 24<sup>th</sup> April 2006. Costs in the cause.

**MARY KASANGO**

**JUDGE**

Dated and delivered this 26<sup>th</sup> May 2006.

**MARY KASANGO**

**JUDGE**