

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

Civil Case 489 of 2003

TROPICAL NECTOR LIMITEDPLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LIMITED.....DEFENDANT

RULING

The Applicant seeks to review the Ruling of Mutungi J of the 6.10.2004.

The grounds is that there is an error on the face of the record namely that the learned Judge used as the basis of his ruling a Statutory Notice of the 22nd January 1999 whereas he should have relied on a Statutory Notice of the 1.4.2004.

The response of the Respondent was that the Judge dealt with both Notices and found fault with them both and as such the remedy was by way of appeal it at all. Further the application was brought after 56 days.

The Ruling which is annexed to the affidavit in support of the application was for the issue of an injunction restraining the Respondent from selling the suit premises on the ground inter alia that the Statutory Notice served was invalid. The application was dated the 1st July, 2004 and was supported by the affidavit of Francis Mburu, the Managing director of the Plaintiff Company.

In the affidavit at paragraph 8, the deponent refers to a letter of the 1st April 2004 which he annexes as an exhibit to his application. This letter is the Statutory Notice giving the Plaintiff three months notice from the date of service thereof that the Defendant would sell the charged property. This is in my view is a perfectly valid notice.

From my reading of the said Ruling, it is apparent that the learned Judge did not deal with the validity of this Notice although it was the subject matter of the application but dealt with a Statutory Notice dated the 22nd January, 1999.

In my view, this gives rise to an error apparent on the face of the record. As the only ground on which the learned Judge granted the application for an injunction was due to the invalidity of the Notice of the 22nd January, 1999, I review the Ruling and dismiss the application for the injunction as the Statutory Notice of the 1st July, 2004 which the Plaintiff sought to impeach is in fact perfectly valid.

The Applicant will have the costs of this application.

Dated and delivered at Nairobi this 25th day of May, 2006.

P. J. RANSLEY

JUDGE