



REPUBLIC OF KENYA

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

Civil Suit 780 of 2000

HOUSING FINANCE COMPANY OF KENYA LTD.....PLAINTIFF

VERSUS

NGIGE KITSON MONDO.....DEFENDANT

RULING

The defendant filed an application dated 31st March 2006 which application was placed before the duty judge on 3rd April 2006 under certificate of urgency. That application sought orders to restrain the plaintiff from advertising, selling, alienating or otherwise interfering with the defendant's land parcel No. 12796 (original 4871/6/2) situated in Kikuyu.

The duty judge certified that application urgent, fixed it for hearing inter partes on 26th April 2006 and then ordered **“status quo to remain until then.”**

When the parties appeared for the hearing inter partes on 26th April, the matter was adjourned by consent to 16th May 2006 and interim orders were extended until then.

Before the hearing date could arrive the plaintiff, through an auctioneer, Kinyanjui Wanjuu, advertised the defendants property for sale in its exercise of its statutory power of sale.

That advertisement provoked the present application by the defendant which applciaiton seeks orders:

“That the Managing Director Housing Finance Company of Kenya; M/s Kibuchi & Co Advocates; Mr A.M. Mureithi and Mr Kinyanjui Wanjauu be committed to prison for such period as this Honourable court will determine for contempt of court.”

The defendant deponed in his affidavit in support of the application that the orders of 3rd and 26th April 2006 were extracted and they, together with the penal notices, were served on the plaintiff company personally, on the plaintiff's advocates and on the auctioneer Kinyanjui Wanjuu trading under the name of Dolphin.

That the plaintiff, despite that service, proceeded to advertise the defendant's property in the Daily nation newspaper of 8th May 2006. The defendant deponed: -

“That the advertisement is part of the process of sale, and the plaintiff, respondent, their advocates and auctioneers are acting in direct disregard and contempt of the orders of the court.”

Defendants advocate defined status quo as to mean that **“the process should stop at the point at which the order is made.”** Counsel submitted that **“where a party by their own act attempted to change status quo as to make it difficult for the court to administer justice”**, the courts have held that such parties were in contempt of court. He relied on the case. MAWANI – V – MAWANI [1977] KLR 159.

The application was opposed. In so doing the respondents relied on a replying affidavit sworn by Mr A.M. Muriithi. It was accepted on behalf of the respondent that an order for status quo to be maintained, was issued on 3rd April and subsequently extended on 26th April. The respondents did not deny service of the extracted orders or the penal notices.

The respondent’s counsel defined ‘**status quo**’ from an extract entitled ‘**The Law Lexicon**’ where it was defined as:

“The existing state of things at any given date. Existing condition.”

Respondent’s argued that there was an injunction granted as sought in the application dated 31st March 2006, and consequently the auctioneer proceeded to advertise the property for sale. That status quo was maintained since the defendant is still in his house. The respondents further argued that status quo as at that time it was issued was that the security was being realised and since there was no injunction given there was no order contradicting that status.

The respondent’s final submission was that they respected court’s orders.

That then, summarises arguments before me. The law dictionary Mozley & Whiteleys defines status quo as:

“The state in which any thing is already.”

The court granted an order of status quo. The order did not indicate what that status quo was or in relation to what. In other words, the court did not state that the status quo related to the defendant’s property nor did it state that the status quo related to realisation of plaintiffs security. Granted that when making that order the court was seized with the injunction application but I am of the view that to have failed to state what the status quo related to was to leave an important gap, which was begging an answer. I am of the view that because of the very nature of the application for contempt that jurisdiction needs to be exercised with care. The standard of proof in contempt proceedings is higher than on a balance of probability. The breach of the contemtor needs to be specifically defined. In *Re Breamblerale Ltd* [1969] 3 ALL ER 1062 it was stated

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved.”

In the case MUTITIKA V BAHARINI FARM Ltd [1985] KLR 227 it was held:

.....the standard of proof in contempt proceedings must be higher than proof on the balance of probability almost but not exactly beyond reasonable doubt.”

I find and hold that the term ‘status quo be maintained’ without regard to what is being ordered, amounts to not being an order capable of attracting an order of contempt. The terminology depending on who is interpreting it would have different meaning. As clearly seen in this case the defendant defined it as freezing any activity on the suit land, the plaintiff bank defines it as permitting the process of realisation of the security to continue. Such different interpretation would defeat the defendant’s application, which seeks to invoke a jurisdiction, which ought to be exercised carefully, and circumspectly. In the case RE MARIA ANNIE DAVIES [1889] 21 QBD it was stated: -

“It seems to me that this jurisdiction of committing for contempt being practically arbitrary and

unlimited, should be most jealously and carefully watched and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is not other mode which is open to the objection of arbitrariness, and which can be brought to bear upon the subject.”

For the reasons given herein before the defendant's application fails and the said application dated 11th May 2006 is dismissed with costs to the respondent.

MARY KASANGO

JUDGE

Dated and delivered this 22nd May 2006.

MARY KASANGO

JUDGE