



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 197 of 2004

**JOHN NZIOKA MATIVO1ST
APPLICANT/PLAINTIFF**

**DAVID MULI MATIVO T/A KANDOLO WHOLESALERS2ND
APPLICANT/PLAINTIFF**

VERSUS

INDUSTRIAL COMMERCIAL

**DEVELOPMENT CORPORATION1ST
RESPONDENT/DEFENDANT**

**REGISTRAR OF LANDS2ND
RESPONDENT/DEFENDANT**

RULING

The applicants by their Chamber Summons of the 26.7.2005 seek the following orders:-

3. THAT the 1st Defendant by itself, its agents and/or servants and in particular KANDE ENTERPRISES be restrained by an interim injunction from auctioning, selling by private treaty or in any other way whatsoever interfering with the Plaintiffs' title to the said property including but not limited to execution of the transfer, registration of the transfer and release and issuance of the documents such as the title deed pending the hearing and final determination of this suit r until further Orders of this Honourable Court.

4. THAT the 2nd Defendant by itself, its agents and/or servants be and is hereby restrained from sanctioning and/or otherwise facilitating the transfer of the title of suit property known as L.R. No. SULTAN HAMUD TOWN/131 to any third party.

The application is based on the grounds contained therein and is supported by the supporting affidavit of the 1st Applicant.

The Applicant was given a loan by the 1st Respondent, which was secured by a charge over his property

known as Title Number Sultan Hamud Town/131. The loan was to be repaid with interest thereon by installments. The charge states in Clause 7(a) as follows:-

“If the Chargor shall make default in the payment of interest on the days hereinbefore provided or shall fail to pay any of the instalments on the days hereinbefore provided for or within ten days of grace thereafter then and in such case the whole principal amount with interest then remaining due and owing by the Chargor under this security shall immediately become due and payable and the Corporation shall be entitled to recover the same forthwith.”

It is not disputed that the Applicant defaulted in the payments as agreed. Thereupon the Respondent took steps to sell the charged property.

It is the Applicants’ contention that the Respondent should have given to the Applicant a demand notice as provided for under Section 65(2) of the Registered Land Act (Cap 300).

He also contended that a Notification of Sale served on the applicant was defective for the reasons set out in paragraph 8(a) (b) and (c) and 18 of the supporting affidavit.

The Respondent filed a replying affidavit sworn by Grace Magunga a Senior Legal Officer with the 1st Defendant. Annexed to her affidavit are documents, which show that the suit premises were sold on the 27.7.2005 at Public auction. The annexed copy of the Applicant’s account shows a credit for Kshs.175,000/= and Kshs.500,000/= paid into the account on the 1st and 31st August 2005 respectively.

It appears from a letter of the 31.8.2005 written by the auctioneer to the 1st Defendant that there was a delay in paying the balance of the purchase price due to misleading information without a court order. However, it is clear that the suit premises have been sold by the 1st Defendant under its statutory power sale and as such the orders sought in paragraph 3 of the application cannot be granted as the sale is a fait accompli. The remedy of the Respondent if any is in damages.

For these reasons, I dismiss this application with costs.

Dated and delivered at Nairobi this 3rd day of May 2006.

P. J. RANSLEY

JUDGE