

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 15 of 2006

JESCA CIAMBAKA MBAKAPLAINTIFF

VERSUS

HOUSING FINANCE CO. OF KENYA LTD.....DEFENDANT

RULING

Application dated 16/2/2006 seeks orders to restrain the defendant, Housing Finance Company Limited, or its agents from selling, alienating or in any other way interfering with land parcel **Magumoni/Thuita/662** pending the hearing and determination of this suit. The grounds are written on the application the major ground being that the Estate of Eliphas Mbaka deceased does not owe the Defendant any money. The demand by defendant of Shs.4,659,647.35 is seven times more than the amount of shs.600,000/= advanced to the deceased.

The application is supported by affidavit of JESSICA CIAMBAKA MBAKA the administrator of the estate of the borrower now deceased. It is shown that the deceased charged his land to secure a loan of Sh.700,000/= but only 600,000/= was disbursed. The loan was insured against the death of the borrower and the insurance paid Shs.490,490/= outstanding at the time of death. That the applicant resides on the charged land with her family.

In her plaint the applicant seeks a declaration and that account be taken on the deceased dealings with defendant. In Replying Affidavit the Defendant states that deceased failed to service the loan. That statutory Notice was issued.

It is also sworn that the deceased had filed 2 other suits on similar cause of action which suits have now adapted and therefore the plaintiff has no cause of action against the defendant. In answer the Applicant/plaintiff states that her case is that the chargors indebtedness was paid off and there is no existing claim by the Defendant.

I have perused letter exhibited by Applicant JCM5 which concerns this issue. It is quite clear there is a dispute between the administrator of the estate and the Defendant. The defendant invited the estate for a discussion by that letter dated 31/10/2003 before a grant had been issued to the Applicant on 8/1/2004. That letter does not explain why the insurance did not pay all outstanding debt if any.

It is my view that this suit is not based on the same grounds like the other suits and therefore the plaintiff should be allowed to pursue the same. In exhibit JSC 4 it is clear the insurance services were offered by the defendant and therefore it will not be necessary to join in third parties in the suit. It is my finding that the issues now between the parties is in the interpretation of the Mortgage Insurance Contract entered into by the deceased and the Defendant. As it is we have only the interpretation of the Applicant that the policy should have covered all outstanding debt on death of her husband. She has a case to be tried. The amount involved is such a large amount that the court can not conclude that damages would be sufficient compensation. On the balance of convenience the applicant is in possession with her family in the circumstances pending the full determination of the suit. I have perused the authorities submitted by Counsel but the facts of this case are special

I grant Interlocutory Orders sought with costs in the cause.

31st July 2006

J. N. KHAMINWA

JUDGE