



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

**Civil Suit 185 of 2006**

**WAMA FEES LIMITED.....1<sup>ST</sup>**  
**PLAINTIFF**

**PETER MAINA NJOROGE.....2<sup>ND</sup>**  
**PLAINTIFF**

**LIVINSTONE MWANGI THUMBI.....3<sup>RD</sup>**  
**PLAINTIFF**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LIMITED.....**  
**.....DEFENDANT**

**R U L I N G**

The parties advocates on 23<sup>rd</sup> May 2006, by consent, fixed for hearing the chamber summons dated 10<sup>th</sup> April 2006. They took 20<sup>th</sup> June 2006 for hearing of that chamber summons. However on that date of hearing the defendant’s advocate failed to attend court and accordingly the plaintiff’s said chamber summons was unopposed.

The plaintiff’s application seek an injunction to restrain the defendant from selling, in the exercise of statutory power sale, three properties of the plaintiff.

The plaintiff’s application is brought under Order XXXIX Rules 1, 2, and 3 of the Civil Procedure Rules. The same is grounded on the grounds; that no valid statutory notice has been served; that the notification of sale served on the plaintiffs are void and illegal; that the respondent has failed to account for certain sums paid into the loan account; that the plaintiffs are not sure of the amount due to the respondent; and that if the charged properties are sold the plaintiff will suffer irreparable loss.

The application was supported by the 1<sup>st</sup> plaintiff’s affidavit, which essentially highlighted the grounds hereof. Additionally that affidavit deponed that when parties entered into negotiation, it was agreed that the application of interest rate to the loan account would be suspended. As consequence of the matters deponed to plaintiff stated that the proposed sale of the charged property would be illegal, and that unless the respondent is restrained from selling the plaintiff’s properties, the plaintiff would suffer irreparable loss.

That court finds that on the basis of the uncontroverted evidence presented by the plaintiff, particular

on the issue of non service of the statutory notice, the issue of non crediting of a certain amounts into the loan account and the issue of agreed suspension of interest rates, the plaintiff has shown a prima facie case with a probability of success.

Accordingly the court grants the plaintiff the following orders: -

**(1) The plaintiffs are hereby granted temporary injunction until the determination of this suit against the defendant's sale, by public auction or otherwise, alienation or dealing with the suit premises known as:**

- a. TITLE NO. NGUIRUBI/NDIUNI/1293, KIAMBU DISTRICT;**
- b. TITEL NO. LOC 8/NGARU/NGUYOINE/81, MURANGA DISTRICT;**
- c. TITLE NO. LOC 8/NGARU/NGUYOINE/242 MURANGA DISTRICT**

**(2) The plaintiff is granted costs of the chamber summons dated 10<sup>th</sup> April 2006.**

**MARY KASANGO**

**JUDGE**

Dated and delivered this 20<sup>th</sup> July 2006

**MARY KASANGO**

**JUDGE**