

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1148 of 2005

MATHEW NGIGI MACHARIA.....1ST PLAINTIFF

MONICA NJERI KIMEMIA.....2ND PLAINTIFF

VERSUS

FRANCIS NGINGE NYOIKE.....DEFENDANT

RULING

The Applicant in the Chamber Summons dated 28th September 2005 is the Defendant in this suit. He seeks, inter alia, an order for the stay of this suit on the ground that the issues in these proceedings are the subject of an Arbitration Agreement pursuant to which arbitration proceedings are already in place.

The suit herein is brought by way of an Originating Summons seeking orders against the Defendant/Applicant for vacant possession of L.R. No Thika Municipality Block 9/510 and /or eviction; mesne profits; costs of the suit and any other relief that the court may deem fit and just to grant.

The Plaintiffs/Respondents' cause of action arises out of a sale of the said property to them by K-Rep Bank in exercise of a chargee's power of sale. The Defendant, the chargor, has refused to vacate the property. The Respondents have opposed the present application on the strength of their Replying Affidavit sworn by the 1st Respondent stating, inter alia, that the application is fatally and incurably defective is an after thought, lacking in merit and an abuse of the process of court. They further state that they are not party to any Arbitration Agreement affecting their right to bring these proceedings and that no such Agreement has been disclosed to this court. According to the Respondents the Applicant is a vexatious litigant who is bent on denying them possession of the suit premises by abusing the process of court with the filing of numerous actions and applications to deliberately delay justice and cause undue prejudice to them. To this end the Respondents have sought leave to refer to the annexures to the affidavit in support of the Originating Summons. I have perused the said annexures and do find that the Applicant has indeed made various attempts to pre-empt the sale and eventual transfer of the suit property none of which have been successful. I have also studied the documents annexed, to the Applicant's Supporting Affidavit and have noted that none of them represent the alleged Arbitration Agreement. The purported arbitration clause appears on the letterheads of Waigi Paints and Hardware Limited under cover of which the Applicant has addressed letters to the chargee herein, K-Rep Bank Limited regarding the loan in respect of which the suit property was charged as security and thereafter sold in exercise of the power of sale earlier mentioned. The same do not constitute an Arbitration Agreement at all and are, in any event, not relevant to the Respondents' suit.

Having considered the application, the Replying Affidavit and all the documentation submitted herein as well as the oral representations made by counsel for the parties hereto I am of the view that this application lacks merit, is unfounded and only intended to delay the Respondents suit.

I am therefore not inclined to allow the application and do hereby dismiss the same with costs to the Respondents.

Dated and Delivered at Nairobi this 14th day of July 2006

M.G. MUGO

JUDGE

Delivered in the presence of

Ndegwa holding brief for Gichohi for the Applicant

Mr Kaburu for the Respondent