

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

**MILIMANI COMMERCIAL COURTS
Civil Case 258 of 2006**

JACKSON KIPROTICH ARAP KIBOR.....PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION.....DEFENDANT

R U L I N G

The plaintiff has brought this application, seeking an injunction to restrain the defendant from selling, advertising, alienating or in any other manner dealing with his property, L.R. No. 10827/2.

It is the plaintiff's case that the title to that property had been deposited with the defendant as security for a loan which the plaintiff obtained from the said defendant.

It is also the plaintiff's case that the security for the loan was later substituted with a charge over the property UASIN GISHU MAFUTA SETTLEMENT SCHEME/1. At that point, the defendant was obliged to discharge L.R. No. 10827/2, but the defendant failed to do so.

In any event, the plaintiff avers that he paid off the entire loan, resulting in the defendant discharging the charge over UASIN GISHU MAFUTA SETTLEMENT SCHEME/1.

Following the repayment of the loan which had initially been secured by the suit property, the plaintiff submits that the defendant has absolutely no legal right to seek to sell of the said property.

When the defendant was served with the Plaint as well as with the plaintiff's application, they entered appearance through the firm of CYRIL S. WAYONG'O, ADVOCATE. The memorandum of appearance is dated 29th May 2006, and it was filed in court on 31st May 2006.

Then, on 13th June 2006, Mr. Ogunde held brief for Mr. Wayongo advocate, and informed the court that the parties were holding negotiations. In order to give the parties an opportunity to continue the said negotiations, the defendant asked that the injunction application be adjourned indefinitely, whilst the status quo was to be maintained.

Thereafter, the advocates for the two parties met at the High Court registry (through their respective proxies), and set down the application for hearing on 25th July 2006.

It is noteworthy that the hearing date was fixed on 23rd June 2006. In effect, it was more than one month before the date when the application was set down for hearing.

Notwithstanding the fact that the defendant's advocates had entered appearance on 31st May 2006, and also that they consented to the application being heard on 25th July 2006, the defendant had filed neither a replying affidavit, nor a defence, by the time the application came for hearing.

In the circumstances, I accept the plaintiff's application and the affidavit in support thereof, as being uncontroverted. Therefore, on a prima facie basis, I hold that the plaintiff has repaid the money which had been lent to him by the defendant, and in relation to which the suit property had been tendered as security. There would thus be no justifiable cause for the defendant taking steps to realise the security.

Accordingly, an injunction order is hereby granted to restrain the defendant, whether by themselves or through their agents or assigns, from advertising, selling, transferring, alienating or in any other manner dealing with the plaintiff's property, L.R. No. 10827/2. This order shall remain in force until the hearing and determination of this suit.

Finally, the costs of the application dated 10th May 2006 are awarded to the plaintiff.

Dated and Delivered at Nairobi, this 30th day of October 2006.

FRED A. OCHIENG

JUDGE