



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

Civil Case 382 of 2006

RUTH WAMBUI MUIGAI.....
.....PLAINTIFF

VERSUS

JOSEPH GIKONYO t/a GARAM INVESTMENTS.....1ST DEFENDANT

INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION.....2ND DEFENDANT

R U L I N G

This is an interesting case. It is interesting because of several factors. First, unlike in most instances when it is chargors who ask the Court to issue interim injunctions to stop the intended sales of property that had been given out as security, the plaintiff herein is not a chargor. She is the widow of the person who was the chargor.

The chargor, John Muigai Mugo, was at all material times, the registered owner of L.R. DAGORETTI/THOGOTO/427/74.

It is common ground that the said chargor applied for a loan of KShs. 8.0 million, from the 2nd Defendant. Although I have stated that it is the chargor who applied for the loan, it must be emphasized that it is not at all clear, as at the moment, whether the loan was to be advanced to him, or whether the loan was to be advanced to Mumu Slaughter House Limited. However, that issue is not significant in the application currently before the Court.

Having applied for the loan, the chargor offered several securities, including a personal guarantee, as well as legal charge over L.R. No. DAGORETTI/THOGOTO/427/74, (which will hereinafter be cited as “**the suit property**”).

When the chargor applied for the loan, he had obtained a valuation report of the suit property. The valuation process had been carried out by Messrs Ebony Estates Limited, who then prepared a Valuation Report dated 6th September 1995.

In the said Valuation Report, the particulars of the suit property are said to be inclusive of “**a new slaughter house with a linked Offal (matumbo) Unit.**”

And the property was valued at KShs. 12 million, for purposes of a fair current market value.

It is the 2nd defendant's case that the Valuation Report persuaded them to approve the application for a loan, subsequent to which the loan was disbursed.

After the chargor (or Mumu Slaughterhouse Limited) had obtained the proceeds of the loan from the 2nd defendant, there were defaults in the repayment of the said loan. As a result of the said defaults, the chargee took steps to realise the security.

The plaintiff's first complaint against the chargee is that even though she had notified it about the demise of the chargor, the plaintiff was not issued with any notices regarding the chargee's intention to realise the security. In that connection, it is important to note that the chargor passed away on 20th March 2005.

In the case of **CALEB KOSITANY & ANOTHER V INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION & ANOTHER, MILIMANI HCCC NO. 473 of 2004**, the Hon. EMUKULE J., quoted with approval the following words of the Hon. RINGERA J. (as he then was) in **RAGUI V BARCLAYS BANK of KENYA LTD [2002] 1 KLR 647**:

“A statutory notice addressed to a deceased person is invalid and has no effect. In this case the statutory notice ought to have been served upon the administrators of the estate.”

The plaintiff cited that authority, to back her contention that the statutory notice or any other notices ought to have been served upon her, before the defendants scheduled the auction of the suit property.

For now, the plaintiff has described herself only as the widow to the chargor, John Muigai Mugo. By virtue of being a widow, the plaintiff could not lay any claim to being an administrator of the estate of the chargor.

The plaintiff has already lodged a Petition in the Family Division of the High Court of Kenya, at Nairobi, seeking the grant of letters of administration. The said Petition was lodged in Court on 14th June 2006. It is only after the Court grants the letters of administration to the plaintiff that she could then lay claim to being the party who ought to be served with requisite notices pertaining to the realisation of the suit property.

In any event, the 2nd defendant has demonstrated that a statutory notice was served upon the chargor on 1st December 2004. The said statutory notice was acknowledged by the chargor, through his letter of 5th January 2005 (which was erroneously dated 5th January 2004). Having been served with that statutory notice, the chargor did not require another one. In the circumstances, I find that the plaintiff has not satisfied me that there was a requirement that she be served with any other specific notice, before the chargee could take steps to realise the security.

The plaintiff also says that she did not know about the existence of Mumu Slaughter House Limited until the year 2005. And even when she became aware of the said company, the plaintiff insists that she has no connection at all with it.

The defendants have not suggested that the plaintiff was connected to the company, Mumu Slaughter House Limited.

For that reason, the plaintiff submits that the 2nd defendant should not be permitted to sell her property. In response, the 2nd defendant says that it has no intention of selling the plaintiff's property.

At that juncture, it would appear that the parties are in agreement. Therefore, one would be right to ask the reason why the plaintiff should nonetheless seek an injunction. The answer to that question is what makes the case interesting.

First, it must be pointed out that the plaintiff was the registered proprietor of two pieces of land, being

L.R. DAGORETTI/THOGOTO/427/71, and L.R. No. DAGORETTI/THOGOTO/427/75. Those two properties were not charged to the 2nd defendant.

A Surveyor's Report, prepared by David Gathecha Ngomo, of Geodata Land Surveyors & Consultants, shows that the MUMU SLAUGHTER HOUSE is built on four different plots, being L.R. NO. DAGORETTI/THOGOTO/427/71; 74, 75 and 90. That implies that when the chargor and Ebony Estates Limited described the slaughter house as being located on only DAGOTTI/THOGOTO/427/74, they were totally inaccurate.

It would appear that the only portion of the slaughter house which was built on the suit property was the offal cleaning block, the offal sales area, a reception and the head sales area; which together are commonly known as "**MATUMBO DEPARTMENT.**" Therefore, when the 1st defendant advertised the suit property as if it included the whole slaughter house, that was erroneous. In other words, the advertisements contained very serious misrepresentations.

If the defendants were allowed to proceed with the intended auction sales, the potential buyers would be led to believe that they were buying the whole slaughter house. However, the suit property constituted a very small portion of the said Mumu Slaughter House.

In the event that any potential purchaser were to be declared the highest bidder, he might be misled to conclude that he had acquired much more property than the chargee was entitled to sell. Therefore, as the plaintiff, who is the registered owner of two parcels of land, which would be affected by the intended sale, never offered the said parcels as security to the 2nd defendant, the intended sales ought to be put on hold.

The plaintiff has made out a clear prima facie case, with a probability of success. She has also satisfied me that there does not appear to be any legal justification for the action which the defendants were undertaking in relation to her parcels of land.

Accordingly, there shall now issue an injunction to restrain the defendants from selling, disposing of, alienating or in any other manner whatsoever, dealing with the plaintiff's properties L.R. NOs DAGORETTI/THOGOTO/427/71 and DAGORETTI/THOGOTO/427/75. The said order shall remain in force until the hearing and determination of the suit. The plaintiff is also awarded the costs of the application dated 19th July 2006.

DATED and DELIVERED at NAIROBI, this 17th day of November 2006.

FRED A. OCHIENG

JUDGE