

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 89 of 2006

JOEL KIPKIRUI BETT.....PLAINTIFF

VERSUS

WILSON MARITIM LASOI.....DEFENDANT

RULING

The plaintiff filed an application by way of a chamber summons brought under **Order VI rule 13(1)(b) (d)** of the **Civil Procedure Rules**. He urged the court to strike out the defendant's statement of defence dated 5th September 2006 and enter judgment in his favour as prayed in the plaint. The application was made on the grounds that the plaintiff was the registered proprietor of a parcel of land known as **Kericho/Silibwet/261**, hereinafter referred to as "***the suit premises***", having purchased the same in a public auction on 20th May 2004. The plaintiff further stated that the defendant's statement of defence did not raise any triable issues and was calculated to delay the finalization of this suit.

In his affidavit in support of the said application, the plaintiff deposed that he bought the suit premises on 20th May 2004, when Kenya Commercial Bank Ltd, in exercise of its statutory power of sale, instructed Garam Investments, auctioneers to sell the suit premises by public auction. The plaintiff paid a total of Kshs.1,650,000/- and was declared the highest bidder. Thereafter, the defendant filed a suit against the plaintiff, Kenya Commercial Bank Ltd. and Garam Investments, Nakuru **HCCC No. 147 of 2004**, seeking an injunction to restrain the bank from transferring the suit premises to the plaintiff. The application was exhaustively argued but the same was dismissed with costs to the plaintiff.

The defendant filed grounds of opposition to the said application. He stated that the application was incompetent, bad in law and incurably defective. He also stated that the application had no merit and was an abuse of the court process. Mr. Kurgat for the defendant submitted that striking out of proceedings was a draconian measure which could only be resorted to in the clearest of the circumstances. He urged the court to disallow the application so that the defendant could ventilate his claim in a full hearing.

I have considered the submissions that were made before this court by counsel for both parties. It is not in dispute that the plaintiff is now registered as the absolute proprietor of the suit premises. Whatever claim that the defendant had over the suit premises has already been extinguished. The court was not made aware of any appeal that had been filed by the defendant following the dismissal of the defendant's application that he had filed against the plaintiff, the bank and the auctioneers. Even if the defendant had a lawful claim over the suit premises, the bank, having exercised its statutory power of sale, any injury that the defendant may have suffered can only be compensated by an award of damages, see ***KITUR AND ANOTHER VS STANDARD CHARTERED BANK AND ANOTHER (No.2) [2002] KLR 640***. In any event the defendant did not show that he had any valid claim over the suit premises. I am satisfied that the plaintiff's application is fully merited and I strike out the defendant's defence and enter judgment for the plaintiff as prayed in his plaint. The plaintiff will have the costs of the suit including the costs of the application.

DATED, SIGNED and DELIVERED at Nakuru this 20th day of December, 2006.

D. MUSINGA

JUDGE

Ruling delivered in open court in the presence of Mr. K. Thuo holding brief for Mr. Karanja for the plaintiff and Mr. Gai holding brief for Mr. Kurgat for the defendant.

D. MUSINGA

JUDGE