



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 76 of 2001**

PASMA HOLDINGS LTD PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION DEFENDANT

RULING OF THE COURT

The parties in this matter appeared before me for mention on 18.5.2005 during which time two issues came up:- One was who should bear the costs of the suit and two, to whom should the title documents be released.

This is a concluded matter as between the parties. The 2nd defendant/interested party lost her property known as Gature/Weru/329 to the plaintiff at a public auction. This followed the 2nd defendant's failure and that of her husband to redeem the said parcel of land that was given as security for a loan taken by the 2nd defendant from the 1st defendant. Initially the 2nd defendant had objected to the title documents being released to the plaintiff after decree in Embu HCCC No. 50 of 1998 had been executed. However, by a consent recorded in court on 13.7.2004 the 1st defendant was allowed to discharge title in respect of land parcel No. Gaturi/Weru/329 and to deposit the said title deed in court pending further orders of the court. The title documents were duly deposited in court.

Each of the parties has contended that they are entitled to the costs of the suit. The plaintiff and the 2nd defendant each contend that they are entitled to the title documents. The position of this matter as I understand it from the record is that the 2nd defendant not only lost the parcel of land to the plaintiff at the public auction but also subsequently lost her efforts to retrieve the land both in this court and before the court of Appeal. She made two attempts at the Court of Appeal and on both occasions, the attempts failed. Her application for an injunction against the plaintiff was dismissed by my brother judge vide his ruling delivered on 30.11.2004, thus sealing the 2nd defendant's fate in the matter.

Mr. Kariuki for the plaintiff submitted that if it were not for the 2nd defendant who didn't want the title documents released to the plaintiff after the auction, costs would not have been incurred, and therefore prays that the 2nd defendant pays the costs. The 1st defendant asks for costs against the plaintiff. The 2nd defendant also contends that the plaintiff should pay the costs of the suit.

I have carefully considered the totality of the facts before this court and find that it is the 2nd defendant who has been loser in this whole case. While she was well aware that her rights in land parcel No. Gature/Weru/329 were extinguished at the fall of the hammer in favour of the plaintiff she still insisted that she had interest in the property and dragged this matter on and on. On the strength of the authorities cited to me by counsel for the plaintiff on the issue of costs (both Mr. Ringera for the 1st defendant and Mr. Kathungu for the 2nd defendant did not file written submissions despite having been given the opportunity to do so.

I find that it is the 2nd defendant who should bear the costs of the suit to both the plaintiff and the 1st defendant. The authorities that were cited to me and on which I have relied on reaching this conclusion are:-

(i) Hussein Mohammed & Sons Vs. Twentsche Overseas Trading Co. Ltd (1967) EA 287.

**(ii) Augustino Muthuri V. Atanasio Karema M'Ikunya (Meru HCCC No. 62 of 1994).
Costs to be agreed or taxed.**

Regarding the title documents, I have no doubt in my mind that the same should be released to the plaintiff. It is admitted by the 1st defendant that the entire debt was repaid and all that concerns the 1st defendant now is the question of costs. It is also not in doubt that by the consent order of 13.7.2004 the 1st defendant was allowed to discharge the title in respect of land parcel No. Gateri/Weru/329. The 1st defendant subsequently deposited the title documents in court.

The 2nd defendant contends that she is entitled to the title documents on the ground that the public auction was not done properly and that she intends to pursue the same further. The facts are clear and the position is that there is nothing further that the 2nd defendant is to pursue. She has already made attempts at the Court of Appeal and failed. In my view therefore, the title documents should be released to the plaintiff to enable the plaintiff regularize the transfer of the same to itself. I accordingly order that the documents be released to the plaintiff.

It is so ordered.

Dated and delivered at Meru this 28th day of July 2005.

RUTH N. SITATI

JUDGE

28.7.5005