

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1219 of 2000

ANGELA MUENI KITALE PLAINTIFF
VERSUS
BENEDICT MAKOSA KITALE 1ST DEFENDANT
HFCK LTD 2ND DEFENDANT

RULING

In his Ruling of the 25.1.2001 Mr. Justice Kasanga Mulwa determined three issues by deciding that the Applicant had a beneficial interest in the suit premises as to one half thereof and the 1st Respondent holds that interest in trust for the Applicant, and that the Applicant was entitled to redeem the charge in favour of the 2nd Defendant over the suit premises. In pursuance of his ruling he directed that the Applicant pays the 2nd Defendant the amount due within 6 months, upon which the 2nd Defendant was to effect a discharge and release of the security on the suit premises. He then finally made the order

“ I also direct that if the Plaintiff makes default in such payment her action to stand dismissed with costs”

In fact the Applicant paid the 2nd Defendant in full although not within a period of six months. This was not due to her fault, however, the 2nd Defendant took no step to sell the suit premises under its statutory power of sale.

The Applicant by her Notice of Motion of the 14.11.2002 seeks to review the said Ruling.

Clearly there is no new evidence nor is there any error on the face to the record. However O.44 Rule 1 refers to ***“other sufficient reasons”***.

I find the final direction of the Learned Judge curious. I can only surmise that he intended that if the Applicant defaulted in payment, the 2nd Defendant would have a right to exercise its statutory right of sale. The question of repayment can in no way impinge upon the orders made that the Applicant was entitled to a beneficial half share in the suit premises.

In the result I review the said Judgment by adding the words “or some longer period as may be required to redeem the charge in favour of the 2nd Defendant”, after the words ***“six months”*** which appears in the last paragraph of the Judgment. These words give effect to the true intention of the Judgment.

Dated and delivered at Nairobi this 19th day of July 2005

P.J. RANSLEY

JUDGE