



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

**AT NAKURU
Civil Case 235 of 2005**

NGWAREINI INVESTMENT CO. OF KENYA.....PLAINTIFF

VERSUS

HOUSING FINANCE CO. OF KENYA.....DEFENDANT

R U L I N G

The Application has been brought through Chamber Summons under Order XXXIX/X Rule 2A(1) of the Civil Procedure Rules, Section 3(A) of the Civil Procedure Act and all the enabling provisions of the law. The application seeks the following Order:-

That the Defendants be permanently from interfering,

Selling and/or auctioning the property viz, LR/Nakuru Municipality/Block 3/71 Nakuru measuring 0.0297. The Application has been supported by the affidavit of one Joseph Ndirangu who has deponed that he was not served with the statutory notice of sale.

The Applicant conceded that he was advanced Kshs.10M by the Respondent in 1998. Out of the above, the applicant has only repaid about Kshs600,000/-. The outstanding balance has now reached over Kshs.57M. In his submissions Mr. Juma for the Applicant stated that the Respondent has been increasing the Interest Rate without consulting his client. Thought the Respondent had promised to waive the interest, he has not done so.

Besides the above, Mr. Juma also submitted that if the property is auctioned today, then his client will suffer irreparable loss. Apart from the above, Mr. Juma also submitted that his client could not repay the loan since the economy deteriorated suddenly and the MD fell ill.

On the other hand, Mr. Kisila for the respondent has opposed the application since the same has no merits and that the affidavit is full of falsehood. The respondent relied on the Replying Affidavit of Mr. George Ndirangu-their Branch Manager. According to

Mr. Kisila, the application is meant to forestall and stop the auction that has been slated for today. He further added that though the Advertisement of the auction was published on 12th September, 2005 – the Applicant waited till 23rd September, 2005.

Apart from the above, Mr. Kisila submitted that the fact that the Appellant has only paid Kshs.600,000, confirms gross default on the loan. Mr. Kisila also referred the Court to the loan document that clearly stated that the interest rate was 29%. In support of his submissions, Mr. Kisila quoted the following

authorities:-

Aberdare Investments Vs HFCK

KCFC Vs Ng'eny & Another

Giella Vs Cassman Brawn & Co. Ltd.

KCFC Vs Afraha Education Ltd.

This Court has carefully perused the above submissions and the quoted authorities. From the above, it is apparent that the Applicant borrowed a whopping sum of Kshs.10M in 1998, at the interest rate of 29%. Unfortunately, about 7 years along the line he has only paid a paltry sum of Kshs.600,000/-. The said sum is less than 5% of the interest of the initial loan. From his conduct, the Applicant has clearly demonstrated that he does not wish to repay the loan at all. He has raised a number of excuses which cannot

advance his cause. The Applicant gave his security voluntarily knowing too well the implications of not repaying the loan. He should also bear in mind that the loan that was advanced to him basically belongs to depositors. In turn, the Bank trades in the same to make profit. The fact that the Applicant has come to the Court at the last moment does not advance his cause. I am satisfied that he knew about the default and never acted on the same.

The upshot is that I hereby dismiss the application since the same has no merit at all. Applicant to bear the costs of the Application.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005.

Ruling read signed and delivered in open Court in the

presence of both Counsels.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005.