



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
COMMERCIAL DIVISION, MILIMANI**

**Civil Case 1399 of 2001**

**HOUSING FINANCE OF KENYA LIMITED.....PLAINTIFF**

**VERSUS**

**KINYERU PHILIP KAMAU .....1<sup>ST</sup> DEFENDANT**

**GRACE MUTHONI KAMAU.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

The plaintiff filed this suit for vacant possession under section 3 of the mortgage (special provisions) Act, Cap 304, Laws of Kenya by a plaint filed on 11<sup>th</sup> September 2001.

On 21<sup>st</sup> February 2002, the plaintiff filed a Notice of Motion seeking a decree for possession of the suit property under section 5 (1). On hearing the said Notice of Motion Hon Justice Ombija ordered that the matter be set down for formal proof. The said ruling was delivered on 15<sup>th</sup> March 2002.

By an application dated 12<sup>th</sup> April 2002, the plaintiff applied for the review of the order made on 15<sup>th</sup> march 2002.

The application came up for hearing and indeed was heard by the Honourable Justice Ombija. By his ruling of 13<sup>th</sup> August 2002, after analysing the issues raised in that application the judge held as follows: -

**“I have carefully examined the application and the provisions of the mortgage (special Provisions) Act Cap 304 and am satisfied that the order of 15<sup>th</sup> March 2002 should be reviewed. However I decline to give the decree for possession of the charged property known as land reference Number 535/45/11 situated in Molo Township of Nakuru District by reason of the fact that: -**

- (1) “What was sought to be reviewed is the ruling of 15<sup>th</sup> March 2002 instead of the order of 15<sup>th</sup> March 2002.**
- (2) The order to be reviewed was not annexed to the application for review as by law enjoined.”**

The learned Judge proceeded to strike out the application for review but granted the applicant leave to file a fresh application with the necessary amendments.

Consequently the plaintiff filed the application by way of Notice of Motion dated 29<sup>th</sup> August 2002. That is the application that was argued before me. That application sought the order, that the court to review

its order of 15<sup>th</sup> March 2002 and to grant the Notice of Motion dated 21<sup>st</sup> February 2002.

Gladly I do not have to consider the merits of that application because they were considered by the learned Judge Hon Ombija, and indeed he found that the application was merited, but for the applicant's failure to annex the order being sought to be reviewed.

I can only confirm that the present application does indeed attach that order and I find no impediment to grant the orders sought. The respondent was heard to refer to the replying affidavit filed in opposition to the application dated 12<sup>th</sup> April 2005. No doubt that the judge who heard that application considered that affidavit.

Accordingly the order of the court is: -

- (1) That a decree for possession of the charged property known as L.R. No.533/45/11 situated at Molo Township in Nakuru District be granted to the plaintiff under the provisions of section 3 (1) of the Mortgages (Special Provisions) Act (Cap 304).**
- (2) That the court bailiff do evict the defendant and put the plaintiff in possession of the charged property known as L.R. No. 533/45/11 situated at Molo Township in Nakuru District.**
- (3) That the plaintiff is hereby granted the costs of this suit together with interest thereon at court's rate.**
- (4) That the plaintiff is hereby granted leave to execute the decree before taxation of the bill of costs.**
- (5) That the costs of the application dated 29<sup>th</sup> August 2002 are awarded to the plaintiff.**

Dated and Delivered at Nairobi this 26<sup>th</sup> October 2005.

**MARY KASANGO**

JUDGE