



REPUBLIC OF KENYA
HIGH COURT OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 239 OF 2003

AYUB SHERO BALUCH.....PLAINTIFF

-VERSUS

SAVINGS & LOAN KENYA LIMITED.....DEFENDANT

R U L I N G

Application dated 3/10/2003 seeks to restrain the defendant from transferring the property plot No. Mombasa/Block IX/165. The grounds set out in the application that the plaintiff has already purchased and paid for the suit premises and no agreement for sale has already been executed by the defendant also that the plaintiff/applicant would suffer untold damage.

There is supporting affidavit of Ayuta Chero Baluch, the plaintiff which shows that he negotiated with defendant for price of Sh.11,400,000 which offer was accepted. Applicant paid 1,140,000/= deposit. It is sworn that before any contract could be executed the defendant's advocate called for an increase of purchase price in breach of the agreement reached. That his family has developed sentimental value of the property. This suit is for specific performance of the said sales agreement. The defendant is the chargee of this property and was in the process of exercising the chargee's right of sale by private treaty with leave of the court.

The defendant obtained an offer from the plaintiff and after sometime he obtained a better offer. As chargee the defendant is bound to sell at the best price.

The plaintiff has not entered into a firm written agreement with the Defendant. The deposit paid has been refunded to the plaintiff's advocates.

In the above circumstances it is my view that this is not a case warranting restraining orders against the chargee. The right of chargee to sell has not been challenged. The plaintiff claim can be compensated with damages, which can easily be calculated. I therefore find that if the plaintiff were to succeed his loss would be compensated with damages, which can easily be calculated.

I therefore find that if the plaintiff were to succeed his loss would be compensated in damages adequately. It has not been alleged that the Defendant an established financial house, would be unable to pay such damages. The court is therefore not inclined to restrain the defendant to exercise powers lawfully granted under the charge.

The application is dismissed with costs.

Dated this 12th day of February, 2004.

JOYCE KHAMINWA

J U D G E

12/2/2004

Ruling read in presence of:-

Mr. Mugambi

Mr. Were – h/b for

Mr. Were

I apply for a copy of the ruling.

Court

Let the same be supplied upon payment of charges to both advocates.

JOYCE KHAMINWA

J U D G E