



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CIVIL SUIT 132 OF 2004**

**MARY NYAKIO WACHIRA (Administratrix of the estate of Joseph Wachira Igoko (deceased))**  
.....**PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA LTD.....1ST DEFENDANT**

**DAVID K. KINGORI.....2ND DEFENDANT**

**RULING**

The Plaintiff, by an application dated 10/5/2004 sought stay of proceedings in Nyahururu PMCC No. 204 of 2003 pending the hearing and determination of this suit. She also sought for an order inhibiting the respondents by themselves, their agents and/or servants from transferring charging or otherwise dealing with Tittle No. L.R. 6585/412 (old title) and new title Nyahururu Municipality Block 6/210 pending the hearing and determination of this suit.

The application was made on the grounds that Nyuhururu PMCC No. 204 of 2003 relates to the same subject matter and should await the determination of this suit and that the suit does not exhaustively deal with the issues of this suit as it only seeks orders for eviction whereas the more important question of ownership of the property had not been addressed. It was also stated that the Nyahururu court had no jurisdiction to grant the prayers sought in this matter. The Plaintiff's contention is that the above property was wrongfully sold by the first Defendant to the second Defendant and she filed this suit seeking cancellation of registration of the second Defendant's title to the said property with an alternative prayer for payment of damages as per the current market value.

The second Defendant had on the other hand filed PMCC No. 204 of 2003 at Nyahururu seeking to evict the Plaintiff from the suit premises, arguing that she was in unlawful occupation of the same, having lawfully purchased the property from the first Defendant upon the former registered owner's default to repay a bank facility which he had obtained from the first Defendant on security of the said property.

Mr. Kariuki for the applicant submitted that the determination of this suit will automatically determine the issues in the subordinate court aforesaid. Mr. Odhiambo for the first Defendant submitted that the suit filed in Nyahururu Law courts was an older one and should be heard first. He further submitted that an injunction having been refused in RMCC No. 233 of 2001, the issues being raised in the present matter are res judicata as an inhibition would operate just like an injunction.

Miss Njoroge for the second Defendant argued that the second Defendant had lawfully acquired the property and should not be frustrated in the use and enjoyment of the same. She submitted that under Section 77(3) of R.L.A. the Plaintiff's claim, if any, could only be for damages. I have considered all the submissions by counsel in this matter. In my view, the issues raised in the two suits and the prayers sought are different and so the matter is not res judicata. It would not be proper for the lower court to proceed with the hearing of the matter pending before it because if the Plaintiff therein succeeds, the applicant may be evicted from the suit premises before this matter is heard and determined and that will be prejudicial to her suit. The applicant is in occupation of the suit premises and the court was informed that she is not paying any rent for the same. The property is currently registered in the name of the second Defendant who is not making any use of the same. If the suit in the High Court is determined in favour of the defendants, the second Defendant would have lost a considerable amount of money which he would have been collecting by way of rent. The applicant has not given any undertaking as to damages. If on the

other hand, the inhibition order is not granted, the suit property may be sold and transferred to other parties before this suit is finalised in which event if any orders are issued in favour of the applicant upon the finalisation of this matter the same would be defeated.

It is in the interest of all the parties concerned that this matter be heard and determined as soon as possible. To secure the interests of both the applicant and the second Defendant I allow the Plaintiff/Applicant's) application but on the following terms:-

(a) The applicant will be depositing in court a sum of Kshs.6,000/- on every 5th day of the month or on the next working day in the event that the 5th falls on a non working day, with effect from 5th November, 2004. This money will be held by the court until this suit is determined and it will be for the benefit of the second Defendant if this suit is determined in his favour but in the event that it is determined in favour of the Plaintiff then the money will be released to her.

(b) The parties and their advocates should ensure that this matter is heard and determined within the next four (4) months from the date hereof.

(c) In the event that the Plaintiff/Applicant fails to comply with the orders in (a) above, the inhibition orders granted shall stand vacated without necessity of any application at all on the part of the second Defendant.

(d) The applicant shall bear the costs of this application.

**DATED, SIGNED & DELIVERED at Nakuru this 19th day of October, 2004.**

**DANIEL MUSINGA**

**AG. JUDGE**