

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 335 OF 2004

Kenyan Reinsurance Corporation LtdPlaintiff

Versus

Stanley Kipkorir RotichDefendant

RULING

The Originating Summons dated 21st June 2004 is seeking mainly one order and that is that the Applicant be granted leave to sell L.R. Number NAIROBI BLOCK III/984 otherwise known as House No.43 in Komarock Estate by private treaty to one Paul Kago Mbugua for Kshs 800,000/= or to any such other person or persons as the case may be at the reserve price of Kshs 600,000/= or more in exercise of the chargee's Statutory Power of Sale under the Registered Land Act. There are four main grounds for this application. These are that on 23rd April, 1998 the Applicant lent to the Respondent Kshs 1,200,000/= on the security of the suit piece of land repayable to the Applicant with interest. The Respondent defaulted where after the Applicant sought to exercise its Statutory Power of Sale resulting in three abortive auction sales in which the bids for the suit property were below the reserve price of shs 600,000/=. That the property market is now depressed and it is not now possible to recover the outstanding sum of Kshs 3,986,571/75 through sale of the suit property by public auction and that the offer made by the said Paul Kago Mbugua of Kshs 800,000/= or any such offer will enable the Applicant recover a substantial part of the said principal sum owing.

The application is supported by an affidavit sworn by one Jane Florence Otieno an Officer of the Plaintiff Company. She has deponed that by a charge dated 23rd April, 1998 the Respondent charged the suit property to the Applicant to secure the repayment of the said sum of Kshs 1,200,000/= with interest. The said charge is annexed to her affidavit. She has further deponed that the Respondent defaulted in repayment of the said loan and the sum now due is Kshs 3,986,571.75. A Statutory Notice of Sale was duly served upon the Respondent and as the default persisted the Applicant through two firms of auctioneers advertised the suit property for sale by public auction. The said Statutory Notice of sale and the auctioneers and Letters are also annexed to the affidavit.

The said Jane Florence Otieno has further deponed that auctioneers sought to sell the suit property three times without success as the bids received at all the auctions were below the said reserve price. The Applicant has in the light of the above sought and identified the said Paul Kago Mbugua who has offered to purchase the suit property for Kshs 800,000/= which offer exceeds any of the bids previously received.

The application is not opposed as despite service the Respondent failed to file a replying affidavit or grounds of opposition.

The application has been made under Section 79 of the Registered Land Act (Cap.300) and Order XXXVI Rule 3 F of the Civil Procedure Rules. The facts as presented by the Applicant are not controverted. There is no doubt that the Applicant's Statutory Power of Sale has arisen. There is also no doubt that further attempts to sell the suit property by public auction will not yield a better price. This application is therefore merited in the interests of both the Applicant and the

Respondent. I accordingly, grant prayer 1 of the Applicant's Originating Summons dated 25th June 2004.

There will be no order as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 1ST DAY OF DECEMBER, 2004.

F. AZANGALALA

AG. JUDGE

Read in the presence of:-