



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO.547 OF 2001

1.NGEGI MUIGAI

2.CATHERINE WANGUI MUIGAI.....PLAINTIFFS

V E R S U S

EAST AFRICAN BUILDING SOCIETY.....DEFENDANT

R U L I N G

This is an application by way of Chamber Summons dated 29/10/2001 brought under Order 39 Rules 1, 2, 3 & 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Plaintiffs/Applicants seek an injunction to restrain the Respondents by itself employees servants and/or agents from selling by public auction Plaintiffs/Applicants' property known as LR/No. MSA/Block XVII/587 and/or delineating or dealing with the said property in any manner.

granted under Certificate of Urgency.

The application is based on the grounds that:

- (a) That the Plaintiff was not served with the mandatory Statutory Notice.
- (b) That Defendant has failed to value the said property.
- (c) That the Defendant has applied unconscionable interest rates on the principal debt of Kshs. 5m.

And that the Plaintiff will suffer irreparable loss. In an affidavit sworn by the Defendant's legal officerwww.

The Applicants did execute a charge in favour of the East African Building Society, the Respondent herein over the suit property for a loan of Kshs.5,000,000/-. They have defaulted on the loan.

Although the debt is admitted the Applicants now say that the interest charged was unconscionable. There is however a schedule of interest attached to the Executed Charge so that the Applicants were fully aware of what was at stake. The property was valued and a report submitted. As at June 25th, 2000, the Valuer wrote:-

“In our opinion the following values would apply taking into account the current

property market conditions, location of the subject property and accommodation provided:

Open market value – Kshs.21m.

Mortgage value - Kshs.19m.

Forced Sale Value - Kshs.17m.”

Having said that and having also noted that a Statutory Notice was given in compliance with the law, I find that the application has no merit. It stands dismissed with costs. Dated this 5th day of March, 2003.

L. P. OUNA

J U D G E