

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO. 279 OF 2002

JAGJIT JOINETY WORKS LTDPLAINTIFF

VERSUS

NATIONAL BANK (K) LTD.....DEFENDANT

RULING

By is chamber summons dated 22nd August 2002 Jagjit Joinery Works Ltd, the plaintiff seeks a temporary order of injunction to restrain M/S National Bank Ltd, the defendant by itself its agents or persons claiming by or under it, from selling, proposing to sell, advertise for sale or otherwise however from interfering with the leasehold interest comprised in parcel No. Kisumu Municipality Block 3/67 pending the hearing of this case. The application is based on some grounds at the for of the summons and two affidavits of Jugjit Singh Munde a director of the plaintiff. The defendant opposes the application relying on a replying affidavit of Mr. Musa Yego its Kisumu Branch Manager.

Mr. Karanja for the plaintiff submitted that the defendant has made an attempt to sell the suit property when the plaintiff has never been served with a statutory notice as stated in paragraph 6 of the supporting affidavit . He contended that the letter dated 14th June 1994 alleged by the defendant to be a statutory notice was in fact addressed to a different party and that the date of its service was not disclosed . According to Mr. Karanja it was premature from the defendant to instruct auctioneers to sell the suit property when all the legal requirements had not been complied with. On that issue alone Mr. Karanja contended that the plaintiff had demonstrated that it had a prima facie with a probability of success. He also claimed that the balance of convenience tilts in favour of granting an injunction to the plaintiff.

Mr. Otieno for the defendant in opposing the application claimed that the letter dated 14th June 1994 was addressed t Delbara Singh Deoga of P.O. BOX 650 Kisumu and quoted the suit land. He added that that letter was a statutory notice addressed to the director of the plaintiff using its address. According to Mr. Otieno Mr. Jagjit Singh Munde the deponent of the affidavits in support of the application has given P.O. Box 650 Kisumu as the plaintiff's address. In his view the provisions of Section 74 of the Registered Land Act were fully complied with by the defendant. Mr. Otieno also contended that there was no evidence that a decision to sell the suit property had been made. He claimed that the defendant was only pressuring the plaintiff to pay the money it owes. Mr. Otieno further submitted that no prima facie case had been made out and that there was no injury pleaded which may befall the plaintiff which is not capable of being compensated by damages. To Mr. Otieno the balance of convenience tilts against the grant of an injunction.

It is not in dispute that the letter dated 14th June 1994 is deemed by the defendant to be a statutory notice which entitles it to enforce on exercise its rights under the charge. This notice is issued to one Mr. Dalbara S. Deogan of P.O. Box 650 Kisumu but there is no indication as to who was the said Mr. Deogan in respect to the plaintiff. The plaintiff's name is never mentioned at all in the whole letter and to me there is no nexus or link between the person addressed and the plaintiff in this case. The address cannot provide that connection between the individual and the plaintiff company.

In my view that is sufficient prima facie case which the plaintiff has shown. The plaintiff has claimed that if the sale is carried out it would suffer substantial and irreparable loss and damage. That has not been challenged.

The balance of convenience in my view favours preserving status quo pending the hearing of this suit

especially as the defendant after instructing auctioneers who have issued notifications for sale and advertising the sale is stating that it was merely pressurizing the plaintiff.

In the circumstances an order of injunction is granted as prayed. The plaintiff will have the costs of this application.

Dated and delivered this 23rd October 2003.

B.K. Tanui

JUDGE