



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1842 OF 200

SAMUEL GITURUKU KIIHIKO PLAINTIFF

VERSUS

**HOUSING FINANCE COMPANY OF KENYA LTD
DEFENDANT**

R U L I N G

By an application by way of chamber summons dated 3rd December, 2001 the applicant seeks three(3) orders:-

- 1) injunction restraining the defendant from advertising for sale, selling by public auction or private treaty, the applicant's piece of land known as Flat No. A1 on L.R.21794 (original No. 4857/89/90) as comprised in a lease registered as IR 76215/1.**
- 2) Any other relief in the unique circumstances of the case.**
- 3) Costs.**

It is based on the grounds that:

a) the defendant has acted in breach and violation of the terms of the charge by:

- 1) purporting to charge rates of interest which is not provided for in the charge; nor*
- 2) within the law and are*
- 3) excessive and unconscionable*
- 4) refusal of defendant to allow the plaintiff to settle the balance.*
- 5) No valuation has been done to ascertain the true value of the property.*
- 6) The purported sale is premature, illegal and in bad faith.*

The application is predicated upon the annexed affidavit of SAMUEL GITURUKU KIHICO sworn on the 3rd of December 2001.

Mr. Okwach for the applicant submitted that the defendant entered appearance on 19/12/2001 and as at 19th February 2002 no defence has been filed.

It was Mr. Okwach's contention that in the circumstances all matters of facts are unchallenged and uncontested I should accept the evidence of the applicant as such.

Mr. Kibuchi conceded that neither replying affidavit nor defence has so far been filed nevertheless he contended that he was on solid grounds on law. He submitted that it is trite law that an injunction will not be granted merely because the amount in question is disputable. I agree.

However, the application and evidence in support raise much more than the issue of accounts. In the foregoing circumstances what is stated in the affidavit of the applicant remains uncontroverted and must, in the absence of any evidence to the contrary, be accepted as representing the correct factual situation as per Mbaluto J. in HIGH COURT AT MILIMANI COMMERCIAL COURTS: CIVIL CASE NO. 149 OF 1999 JORAM THUO WAIGA -vs- KENYA COMMERCIAL FINANCIAL COMPANY LTD. (unreported).

The upshot is that the defendant shall be restrained by an injunction in terms of prayer 1 of the chamber summons dated 3rd December 2001 until the hearing and determination of the suit. The defendant shall bear the plaintiff's costs of this application.

DATED AT NAIROBI THIS 19th day of MARCH 2002.

N.R.O. OMBIJA

JUDGE

Read in the presence:

Mr. Ouna for Okwach for plaintiff/applicant

Mr. Kibicho for defendant/respondent