

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 1287 OF 2001

HILL RIVER FARM LTD. PLAINTIFF

VERSUS

AGRICULTURAL FINANCE

CORPORATION..... DEFENDANT

R U L I N G

By an application by way of chamber summons dated 7th August, 2002, under the provisions of Order XXXIX Rule 9, 2A(2) of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Section 5 of the Judicature Act (Cap 8 of Laws of Kenya) and under the High Court Vacation Rules, the applicant seeks orders that:

- 1) leave be granted to hear this application during the High Court vacation.**
- 2) this honourable court be pleased to grant leave to the applicant herein to institute contempt proceedings against the respondent's Managing Director, Mr. Gideon Kibet Toroitich.**

The application is based on the grounds that:

- 1) despite the fact that the respondent were represented in court on 22 nd August 2001, auction went ahead and the applicant has been prevented from entering the suit premises.**
- 2) the acts of the respondent's Managing Director shows that he has no respect for the honourable court.**

The application is predicated upon the annexed affidavit of JARED OTHIENO sworn on 7th August, 2002.

Mr. Owino Opiyo argued that one Gideon Kibet Toroitich, the Managing Director of the defendant, has blocked the applicant from entering the suit premises despite the court order that cancelled the proposed sale of the suit property.

There is neither affidavit of service as evidence of service on the said Gideon Kibet Toroitich nor a copy of the order stopping the sale which is alleged to have been flouted. In the foregoing circumstances I am reluctant to issue leave to institute contempt proceedings.

Accordingly the application is struck out with no order as to costs.

DATED at NAIROBI this 3rd day of October, 2002

N.R.O. OMBIJA

JUDGE