

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIV CASE 1972 OF 2000

JAYANTI & JAGDEEP DEVELOPERS LIMITED.....1ST PLAINTIFF

JAYANTI A. PATEL.....2ND PLAINTIFF

JAGDEEP L. KOTEDIA.....3RD PLAINTIFF

-VERSUS

SAVINGS AND LOAN KENYA LIMITED.....DEFENDANT

RULING

The applicant by Chamber Summons dated the 21st and filed on 22nd December, 2000 is asking for Orders restraining the defendant from selling the property L.R. No. 1870/111/461 formerly No. 1870/111/367/368. The application is supported by the grounds that no Statutory Notice of Sale was served on the applicant and secondly there was gross breach of the loan agreement to the extent that the agreement remains null and void leaving the Respondent with no justification to result to the sale of the property. The application is opposed on the grounds that a proper Statutory Notice was served on the Respondent and that it is the applicant who is in breach of the agreement between the parties. The Respondent like the applicant has filed a replying affidavit in which it supports its opposition to the application. The matters raised in the application and in the opposition to it are matters, which call for proof through production of further evidence to what is before me. I agree with the applicant that the best course for this application is to have the main suit heard the soonest possible. It will be noted that interest will continue to accrue to the detriment of the party who will ultimately lose the case. Since there is an allegation of breach of the contract by the Respondent and a claim that there was no Statutory Notice served on the applicant matters, if proved to be true would entitle the applicant to the reliefs sought I deem it necessary to allow the application and stop the sale so that the suit can be heard. I will therefore allow Chamber Summons. The Orders granted shall last until suit is heard and finalised.

The costs shall be in the course.

Delivered and dated this 7th of February, 2001

KASANGA MULWA

JUDGE