



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 2003 of 2000**

**JOSHUA MULI KIILU .....**  
**PLAINTIFF**

**VERSUS**

**HOUSING FINANCE COMPANY OF KENYA LIMITED ..... 1<sup>ST</sup>**  
**DEFENDANT**

**ALPHA AUCTIONEERS ..... 2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

The 1<sup>st</sup> defendant is a financial institution carrying on the business of banking and providing mortgage facilities. The plaintiff is a male adult residing and working for gain in Nairobi. The 2<sup>nd</sup> defendant is an auctioneer.

By a charge and a further charge dated 17.12.1997 and 26.6.1998 respectively the plaintiff charged his property L.R. No. 209/10708 Nairobi to the 1<sup>st</sup> defendant to secure the repayment of a loan which the plaintiff had obtained from the 1<sup>st</sup> defendant.

According to the 1<sup>st</sup> defendant, the plaintiff did not service the loan in accordance with the agreement between the parties and the property was subsequently sold by the 2<sup>nd</sup> defendant under instructions given to him by the 1<sup>st</sup> defendant. At the auction the applicant is said to have emerged as the successful bidder and was declared the purchaser.

Subsequently the plaintiff lodged an application in this court to restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from disposing of the property. Although the plaintiff duly acknowledged that the sale had taken place, he did not join the applicant in the suit and consequently orders were granted in the matter without the participation of the applicant in the proceedings.

The applicant has now come to this court for an order to be added as a party and for the orders granted in his absence to be vacated. With regard to the request for the vacation of the orders granted prior to the filing of this application, I do not think that the applicant has the legal capacity at this stage to come to court and urge the court to vacate the orders granted before he is added as a party. However as to his being added as a party (whether as plaintiff or defendant) O. 1 Rule 10(2) clearly allows that. It

provides:-

***“10 (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”***

Accordingly, the application is allowed in terms of prayer (c) of the Chamber Summons dated 10<sup>th</sup> January, 2001 and the applicant granted leave to file within the next 15 days of the date hereof the necessary papers to effectuate this order failing which the application will stand dismissed. The costs of the application will be in the cause.

Dated at Nairobi this 12<sup>th</sup> day of April, 2001.

T. MBALUTO

JUDGE