



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT KISUMU

ELC. NO. 254 OF 2013

GOR CONSTRUCTION & HARDWARE COMPANY LIMITED.....PLAINTIFF

-VERSUS-

MARTHA CHIMWENE.....DEFENDANT

RULING

1. The Plaintiff moved the court through the Motion dated the 30th October, 2018, seeking for an order of prohibition on parcel L.R 15983/66, registered as I.R 67785/1, and sale of house No.48 situate at Kenya Re Estate Kisumu, on L.R 15983/66, registered as I.R 67785/1, to satisfy the decree dated 21st September, 2018 interest and costs herein. The application is based on the four (4) grounds on its face and supported by the affidavit sworn by Gordon Orure Kaoko, director to the plaintiff, on the 30th October, 2018.

2. The application is opposed by Martha Chimwene, the Defendant, through her replying affidavit sworn on the 17th January, 2019.

3. The application came up for hearing on the 28th January, 2019 when counsel for both parties agreed to file and exchange written submissions. That subsequently the learned counsel for the Plaintiff and Defendant filed their submissions dated the 19th February, 2019 and 12th May, 2019 respectively.

4. The following are the issues for the court's determinations;

a. Whether the Plaintiff has established a case to attach and sell the Defendant's property to recover the money paid to her.

b. Who pays the costs.

5. The court has carefully considered the grounds on the motion, both parties affidavit evidence, the written submissions, the record, and come to the following determinations;

a. That the court vide the ruling of 21st September, 2016 entered summary judgement in favour of the Plaintiff, and against the Defendant, for payment or refund of Kshs.1,500,000 (One Million, Five Hundred thousand) only awaiting the resolution of the issues of breach of sale agreement, interests, damages and costs. That since that date, the defendant has not challenged that ruling through appeal or review application.

b. That the Plaintiff's Motion dated 30th October, 2018 seeks for prohibition order and sale of the Defendant property being House No. 48 situate at Kenya Re L.R 15983/66 (I.R 67785/1) to realise the amount decreed. The Plaintiff also prays at Prayer 3 for the court to give "directions on the conduct of the decree, interest and costs therein." The Defendant has not disputed the indebtedness, but prays to be allowed to pay it in twelve (12) months, claiming she has already paid a total of Kshs.465,000. The Defendant has annexed the receipts for Kshs.250,000 and Kshs.100,000 of 11th May, 2018 and 12th June, 2018 respectively, and a letter dated 21st March, 2018 forwarding a cheque of Kshs.165,000. That the foregoing shows that the Defendant still owes the plaintiff over one million Kenya Shillings. That the Defendant has not made any payment for over one year since June, 2018 and there is no reason presented to the court why she should be given more time to pay.

c. That the court finds that the Plaintiff has accommodated the Defendant for long and he deserves to be assisted by this court to get back his money.

6. That flowing from the foregoing, the court finds merit in the Plaintiff's application dated the 30th October, 2018 and is hereby granted in the following terms:-

a. That the Plaintiff is at liberty to attach and sell, through public auction the defendant's property described as House No.

48, Kenya Re Kisumu in Land Parcel No. L. R 15983/66 (I.R 67785/1), to satisfy the outstanding sum arising from the court's ruling of the 21st September, 2016.

b. The Defendant do pay the Plaintiff the costs of this application.

c. That so as to safeguard the said property as the attachment and public auction process takes place, prohibition order in terms of prayer 1 is hereby granted.

Order accordingly.

S. M. KIBUNJA

ENVIRONMENT & LAND - JUDGE

DATED AND DELIVERED THIS 3RD OF JULY, 2019.

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Sala for the Plaintiff

Mr. Arikho for Ogondo for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE