



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC. APPLICATION NO. 8 OF 2016**

**ROSELINE BOKE MOTATIRO.....PLAINTIFF**

**-VERSUS-**

**THOMAS CHACHA GATI.....1<sup>ST</sup> DEFENDANT**

**STANDARD CHARTERED BANK KENYA LTD...2<sup>ND</sup> DEFENDANT**

**RULING**

What is before me is the plaintiff's application dated 20<sup>th</sup> January, 2016 seeking leave of the court to sue as a pauper. The application is supported by the affidavit and further affidavit sworn by the applicant on 20<sup>th</sup> January, 2016 and 18<sup>th</sup> March, 2016 respectively. The application is accompanied by a statement of pauperism and the particulars of claim both dated 20<sup>th</sup> January, 2016. In her statement of pauperism, the applicant has stated that she is unemployed and unable to make ends meet. The applicant has stated that she relies mostly on well-wishers for her sustenance. The applicant has stated that she does not have movable or immovable property and as such she has no means of paying court fees for the suit she intends to institute against the defendants. The applicant has annexed to her affidavit in support of the application a letter from her area Chief confirming her poverty.

In her particulars of claim, the plaintiff has stated that she is married to the 1<sup>st</sup> defendant and that they have three (3) children. The applicant has stated that the 1<sup>st</sup> defendant is the registered proprietor of all the parcel of land known as L.R No. Nairobi/Block 111/1215 ("the suit property"). The applicant has averred that the suit property constitutes her matrimonial home and that she occupies the same with her family.

The applicant has averred that on or about 24<sup>th</sup> December, 2013, the 1<sup>st</sup> defendant without the applicant's knowledge or consent took a further mortgage loan from the 2<sup>nd</sup> defendant on the security of the suit property. The applicant has averred that her purported consent to the said mortgage was forged by the 1<sup>st</sup> defendant and that the 2<sup>nd</sup> defendant accepted the said consent without conducting due diligence to confirm that she had indeed signed the same. The applicant has averred that the 1<sup>st</sup> defendant who was an employee of the 2<sup>nd</sup> defendant was sacked in January, 2015 and that the 1<sup>st</sup> defendant has since then remained unemployed. The applicant has averred that she learnt that the 1<sup>st</sup> defendant had executed a further charge over the suit property in favour of the 2<sup>nd</sup> defendant when the 1<sup>st</sup> defendant brought a prospective purchaser to view the suit property as he wanted to sell the same to pay off the loan due to the 2<sup>nd</sup> defendant. The applicant has contended that the charge that was executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant was tainted with fraud and that the 2<sup>nd</sup> defendant was negligent in accepting the purported spousal consent that was presented to it by the 1<sup>st</sup> defendant.

At the hearing of the application, the applicant told the court that she was unemployed and that she had three (3) children. The applicant stated that she was unable to pay court fees for the intended suit against the defendants. The application was opposed by the 2<sup>nd</sup> defendant through grounds of opposition dated 29<sup>th</sup> January, 2016. The 2<sup>nd</sup> defendant denied that the applicant is a pauper. The defendant contended that the application offends Order 33 Rule 18 of the Civil Procedure Rules, 2010. The 2<sup>nd</sup> defendant contended that the claim by the applicant does not disclose a cause of action against the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant termed the application an abuse of the court process.

In his submissions in opposition to the application, the 2<sup>nd</sup> defendant's advocate reiterated the contents of the 2<sup>nd</sup> defendant's grounds of opposition. The 2<sup>nd</sup> defendant's advocate admitted that the application was properly before the court. He submitted however that the applicant had failed to establish that she is a pauper. He submitted that the applicant did not place sufficient material before the court on the basis of which the court could ascertain her pauperism. The 2<sup>nd</sup> defendant's advocate submitted further that the applicant's claim does not disclose a cause of action against the 2<sup>nd</sup> defendant in that the applicant failed to demonstrate that her signature on the spousal consent to the further charge was forged. The 2<sup>nd</sup> defendant submitted that there was no dispute in relation to the first charge that was executed by the 1<sup>st</sup> defendant when spousal consent was not required. Counsel urged the court to dismiss the application.

I have considered the application together with the supporting documents. Under Order 33 of the Civil Procedure Rules, the court is supposed to refuse to grant leave to an applicant to sue as a pauper on the following grounds:

- a. Where the application is not brought in accordance with the prescribed rules;
- b. Where the applicant is not a pauper;
- c. Where the applicant has disposed of its property within a period of two (2) months preceding the bringing of the application with a view to apply for permission to sue as a pauper;
- d. Where the allegations does not show a cause of action;
- e. Where the applicant has entered into an agreement in respect of the property the subject of the proposed suit under which any person has acquired an interest in the subject matter.

I am satisfied that the applicant's application has satisfied the conditions for granting the leave sought. It was not contested that the application is properly before the court. On the issue as to whether or not the applicant is a pauper, no affidavit was filed by the respondents to controvert the averments contained in the applicant's affidavit that she is a pauper and that she is not able to raise the court fees. The applicant's contention that she is unemployed and that she has no movable or immovable assets was not controverted by the respondents. There was also no evidence that the applicant had disposed of any of her properties prior to bringing the application or that she had entered into any contract in relation to the suit property.

For the foregoing reasons, I find merit in the Notice of Motion dated 20<sup>th</sup> January, 2016. The application is allowed as prayed.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of July 2018**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of**

The Applicant/Plaintiff in person

N/A for the 1<sup>st</sup> Defendant

Mr. Karanja h/b Mr. Nyaburi for the 2<sup>nd</sup> Defendant

Catherine Court Assistant