

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 34 OF 2021

JESSICAH ATIENO GEORGE T/A

BLOOMING AGENCIES.....PLAINTFF/APPLICANT

VERSUS

LETSHEGO KENYA LIMITED.....1ST DEFENDANT/RESPONDENT

RIGENT AUCTIONEERS.....2ND DEFENDANT/RESPONDENT

RULING

Jessicah Atieno George T/A Blooming agency hereinafter referred to as the plaintiff has filed this suit against Letshego Kenya Limited and Regent Auctioneers. Accompanying the suit is an application for a temporary injunction pending the hearing and determination of the suit. The plaintiff states that the 1st Defendant is a microfinance institution a limited liability company incorporated under the Companies Act Cap 486, its address of service for purposes of service of summons is through the plaintiff's advocate.

The 2nd Defendant is an Auctioneer firm operating in Nairobi area in the Republic of Kenya which was instructed to issue a redemption notice and notice of sale to the plaintiff. During the month of May, 2019 the plaintiff applied for loan facilities from the 1st Defendant which facilities were granted by the 1st Defendant upon registration of a legal charge of the plaintiff's property being Title Deed No. KISUMU/BAR/2734 and KISUMU/KONYA/3368 situated in Kisumu.

The plaintiff obtained a loan of Kenya shillings Four million (Kshs. 4,000,000) from the 1st Defendant as foresaid. The plaintiff has effected the repayment of Kenya shillings Seven Hundred Thousand only (Kshs 700,000/=) and is currently in arrears of Kenya shillings Three Million Three Hundred Thousand (Kshs. 3,300,000). At all material times to this suit and around March 2020, the country was hit by a pandemic and the country was put on lock down, the plaintiff's business was highly affected making the income flow low and difficult for the plaintiff to service the loan which the plaintiff had previously been servicing as agreed.

The Plaintiff has pleaded with the 1st Defendant to allow her pay the remaining amount of Kenya Shillings Three Million Three Hundred Thousand (Kshs. 3,300,000) through installment of Kenya Shillings Sixty Thousand (Kshs 60,000) monthly until such times as the business environment has improved. The 1st Defendant has now purported to sell the suit property of KISUMU/BAR/2734 in Wachara area Kisumu County by instructing the 2nd defendant to issue a notification of sale and redemption notice to the plaintiff for the purpose of procuring a public auction. The 2nd Defendant insists on selling by public auction the Plaintiff's property despite her being willing to service the remaining amount of Kenya Shillings Three Million Three Hundred Thousand (Kshs. 3,300,000) in installments and despite them holding the land title as security. The plaintiff has not refused to pay, but has asked to be allowed to pay the loan arrears in installments which she can be able to service monthly and without default. The Plaintiff despite all this has been working extremely hard to ensure that she meets the demands of the 1st defendant and has been in constant contact with her on how they can reschedule the repayment of the loan arrears.

The plaintiff prays that a **permanent injunction restraining the defendant/respondent by themselves, their employees, servants, agents or anybody from selling by way of public auction and/or private to sell the Plaintiff's property known as L. R. No. Kisumu/bar/2734 and an order for settlement of the outstanding loan arrears by way of monthly installments.** I have perused the plaint and application and do find that this court has no jurisdiction to entertain this suit as it revolves on a commercial dispute. I do transfer this matter to the High Court for hearing and determination.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2021

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

ANTONY OMBWAYO

JUDGE