



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**COMMERCIAL CASE NO. E001 OF 2020**

**FERNANDO H WANGECHI MURIUKI.....PLAINTIFF**

**VERSUS**

**FAMILY BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. **FERNANDO H WANGECHI MURIUKI (Fernandoh)** filed this case seeking orders of declaration that the amount **FAMILY BANK LIMITED (the Bank)** was claiming from her was illegal and unlawful, and an order for injunction to restraining the bank from realising its security, that is Riverside Estate Kiambu County, title No. NDUMBERI/RIABAI/2603 Kirigiti Area, (the property). Fernandoh admits that she obtained financial facility from the Bank in March, 2016. As security for that facility she offered the property which was charged to the bank. Fernandoh alleges the Bank charged unregulated interest and penalties and as at October, 2020 demanded Kshs.28,625,846.83. It is that amount Fernandoh seeks a declaration that the Bank is claiming unlawful amount.

2. Fernandoh by Notice of Motion application dated 13<sup>th</sup> November, 2020 sought interlocutory injunction to restrain the Bank from realising its security through a public auction on 17<sup>th</sup> November, 2020.

3. The Bank opposed the application and in opposing brought to the court's attention that Fernandoh had filed two other suits alleging the same wrongs, at the Commercial court in Milimani.

4. Fernandoh's learned counsel sought three adjournments to respond to those depositions by the Bank but in the end no response was filed on behalf of Fernandoh. It follows that what was deposed by the Bank's legal officer remains uncontroverted.

5. It is to the effect that Fernandoh filed Misc. Civil case No. 257 of 2018, which case is still on record, and also filed High Court Civil Suit No. E023 of 2019 which case was struck out for being an abuse of the court process having been filed on the same facts as Misc. Civil case No. 257 of 2018 and being filed while the said Misc. Civil Case No. 257 of 2018 was still subsisting. The Bank has raised similar objection, that this present suit is an abuse of the court process having been filed while Misc. Civil Case No. 257 of 2018 is subsisting.

6. As stated before, Fernandoh did not controvert that deposition.

7. I am of the view that the court has power to invoke its inherent power to stop its process from being abused. No doubt Fernandoh is abusing the process of the court in filing this suit when another earlier suit based on the same facts is subsisting. I am persuaded by the Canadian case **SANOFI-AVENTIS CANADA INCO. V. NOVOPHARM LTD 2007 FCA 163 (CANLII) (2008) IFCR 174** thus:-

*“The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute...”*

*The two policy grounds, namely, that there be an end to litigation and that no one should be twice vexed by the same cause, have been cited as policies in the application of abuse of process by litigation. Other policy grounds have also been cited, namely, to preserve the court and the litigants' resources, to uphold the integrity of the legal system in order to avoid inconsistent results, and to protect the principle of finality so crucial to the proper administration of justice.”*

**DISPOSITION**

8. In view of what is stated above, I make the following orders:-

(a) This case is hereby struck out with costs for being an abuse of the court process.

(b) The defendant is awarded the costs of Notice of Motion dated 13<sup>th</sup> November, 2020 and the costs of preliminary objection dated 17<sup>th</sup> November, 2020.

***RULING DATED, SIGNED and DELIVERED at KIAMBU this 6<sup>th</sup> day of MAY, 2021.***

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant .....Ndege

Plaintiff: .....N/A

For the plaintiff .....N/A/

For the 1<sup>st</sup> defendant.....Ms. Onsare

For the 2<sup>nd</sup> defendant.....

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**