REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 3 OF 2020

LOLLDAIGA COUNTRY HOMES & GOLF RESORT LIMITED.....PLAINTIFF

VERSUS

CREDIT BANK LIMITED.....1ST DEFENDANT

LEAKEY AUCTIONEERS .....2ND DEFENDANT

JUDGEMENT

Brief Facts

1. The Plaintiff in this suit instituted vide a plaint dated 10th July 2020 seeks for orders that this court do issue a declaration that the intended auction for L.R NANYUKI/MARURA BLOCK 4/04(MURIRU) scheduled for 14th July 2020 or any other date is unlawful and void ab-initio and that a permanent injunction do issue against the defendants barring them from selling the said security.

The Plaintiff's Case

2. The plaintiff adopted his evidence in the witness statement in which he states that the plaintiff company deals with property development and has three directors who were named therein. The plaintiff is the registered proprietor of Land Parcel No. NANYUKI/MARURA BLOCK 4/04 (Kimuri) that was given a security for a loan advanced by the 1st defendant.

3. It is the Plaintiff's case that in May 2015, he entered into an agreement for a loan facility with the 1st defendant for an amount of Kenya Shillings Two Hundred and Fifty Million (Kshs. 250,000,000/) payable within a period of twenty seven (27) months at an interest rate of 16.5% per annum and charged the suit property as security for the loan. The salient terms of the loan agreement were that the 1st defendant was to give a six (6) month notice before altering the terms of the agreement; a moratorium period of 15 months during the construction period; a twelve (12) months repayment period subsequent to the moratorium and that the confirmed sales of the cottages would be channelled through the 1st defendant.

4. Pursuant to the agreement, the 1st defendant disbursed the first Kenya Shillings Eleven Million (Kshs. 11,000,000/) to cover the electricity connection and water by sinking a borehole. Kenya Power and Lighting Company was paid Kenya Shillings Six Million Seven Hundred Thousand (Kshs. 6,700,000/) but they delayed in connecting electricity and thus construction started after 17th March 2016.

5. Moreover, the first certificate for the contractor was issued on 25th July 2016 by which time the moratorium period was almost over and the 1st defendant delayed in disbursing funds until 17th November 2016. The 1st defendant started demanding that the plaintiff put money in the project which the plaintiff did not have. The plaintiff states that it negotiated and requested for an extension of the moratorium period but the 1st defendant demanded the plaintiff clear Kenya Shillings Five Million (Kshs. 5,000,000/) as interest which the plaintiff paid on 6/12/2015. The moratorium period was extended through a restructure of the loan agreement on 20th December 2017 for six months in regard to Kshs. 29,321,335/-. The restructured amount consisted of the amount payed on the project Kshs. 11M for preliminaries and Kshs. 16.9M which was payment of the certificate. The witness testified that the restructured amount of Kenya Shillings Twenty Nine Million (Kshs. 29,000,000/) and its mode of repayment was a different contract from the initial loan agreement of Kshs. 250M.

6. The plaintiff further contends that the 1st defendant refused to put more cash in the project and demanded that they pay what they had taken on the restructured payments. On 3/5/2017, the 1st defendant sent a statutory notice demanding payment of the full amount. The plaintiff states that they sold a portion of their land to pay the loan. The 1st defendant on 24/5/2019 issued a Notice to Sell by public auction demanding Kenya Shillings Thirty Four Million Two Hundred and Sixty Four Thousand and Three Hundred and Eighteen and Sixty Cents

(Kshs. 34,264,318.60/). The plaintiff contends that the intended sale is void ab-initio and unlawful because the 1st defendant did not issue notices to the guarantors; the 1st defendant breached the fundamental terms of the loan agreement as it failed to give the plaintiff the agreed mount of Kshs. 250M and only released Kshs.29M and the 1st defendant failed to carry out a proper valuation. As such, the sale by public auction should be declared null and void and stopped permanently.

The Defendant's Case

7. The Defendant led evidence through Mr. Wainaina Francis, who is Head of Legal Services of Manager of the 1st Defendant and he adopted his witness statement as his testimony.

8. It is the defendant's case that in 2015 the plaintiff applied for a loan which was advanced pursuant to Offer Letter dated 28/5/2015 at Kshs. 250M to be paid in instalments upon producing the contractor's certificate and evidence by the plaintiff of its contribution. The loan was to be paid within 12 months after the moratorium period. The plaintiff did not produce evidence of its contribution. Moreover, the proceeds of the sale were to help in repaying the loan which was an option. The 1st defendant further testified that it released funds on 17/7/2015 for a borehole and power connection. Further on 25/7/2016 the plaintiff requested Kshs 16,979,227/- which the 1st defendant granted despite the plaintiff failing to produce evidence of contribution. Thereafter the 1st defendant states that they did not disburse any more funds to the plaintiff for they had failed to repay the loan already released to them which amounted at Kshs. 28,675,735/-.

9. The 1st defendant testified that it granted the plaintiff's request dated 6/12/2017 to restructure the loan of Kshs. 29,231,335/- to be repaid in six months. The plaintiff did not pay the amount as agreed and on 28/6/2018, they requested the 1st defendant for a further period of six months to repay the amount which the 1st defendant obliged. However, the 1st defendant states that the plaintiff failed to pay despite the extension of time on two occasions.

10. The 1st defendant states that it exercised its powers of redemption and issued a statutory notice dated 14/2/2019 which was served upon the plaintiff. After the lapse of the statutory notice, the 1st defendant issued a forty (40) days' notice to sell and conducted a valuation of the property through Clayton Valuers. The 1st defendant then instructed the 2nd defendant in April 2020 to sell the property to recover the outstanding balance of the loan. The 2nd defendant advertised the sale on 22/6/2020 in the Nation newspaper. The 1st defendant adds that since there was a pandemic, they did not sell the property for one year.

Plaintiff's Submissions

11. The plaintiff reiterates the contents of the witness statement and in his oral testimony and submits that the 1st defendant was in breach of the contract which was a loan facility of Kshs. 25M payable upon the expiry of 27 months in a lump sum as the bullet principle was operational. The 1st defendant in breach of the terms of the loan agreement decided to recover the amounts disbursed within the moratorium period. The plaintiff relied on the case of **Central London Property Trust Ltd vs High Trees House Ltd (1956) 1 All ER 256** and submits that the 1st defendant is estopped from going back from the terms of the agreement on the bullet payment as the plaintiff relied on the said agreement and incurred expenses by sinking a borehole, connected electricity on the premises and built some cottages.

12. The plaintiff further submits that the 1st defendant is in breach of **section 96(3)(h) of the Land Act 2012** as none of the guarantors were served and also **section 97 of the Land Act** as the 1st defendant has not done any valuation of the property. The 1st defendant did not serve the plaintiff with any valuation report, a fact admitted by the 1st defendant witness. As such, the plaintiff submits that it has proved its case on a balance of probabilities and prays that the orders sought are granted.

Defendants' Submissions

14. The defendants reiterate what he stated in his oral evidence and witness statement and submits that the plaintiff company has no proper standing in this court as it did not resolve to sue and no authority was issued to the firm of Ng'ang'a Munene & Company Advocates to institute this suit. The 1st defendant relies on **Order 4 Rule 1 and 4 of the Civil Procedure Rules** and the case of **Daykio Plantations Limited vs National Bank of Kenya Limited & 2 Others [2019] eKLR** and submits that a party must establish locus standi to institute a suit in default of which, the court is enjoined to strike out the entire suit. The 1st defendant further relied on the cases of **Saraf Limited vs Augusto Arduin [2016] eKLR; East African Portland Cement Ltd vs Capital Markets Authority & 4 Others [2014] eKLR**; **Directline Assurance Company Limited vs Tomson Ondimu [2019] eKLR** and **Regional Container Freight Station Limited & 2 Others vs Zum Investment Limited [2019] eKLR** and submits that a suit can only be instituted by a company with the sanction of its Board of Directors or by a resolution in general or a special meeting failure to which the court ought not to entertain the suit. The defendants state that the plaintiff did not provide any evidence of the requisite resolutions and as such, the court ought not to entertain this suit.

14. Moreover, since the plaintiff has no locus standi, it is the defendants' submission that their advocates ought to bear the costs of the suit. They make reference to the case of **East African Portland Cement Ltd vs Capital Markets Authority & 4 Others [2014] eKLR** and submit that the advocates who are officers of the court, ought to have properly advised their clients.

15. The defendants rely on **section 74, 90 and 131 of the Land Act** and submit that they issued a statutory notice dated 3rd May 2017 under **section 90 of the Land Act** and thereafter a notice dated 18th August 2017 under **section 96(2) of the Land Act.** The 1st defendant also issued the three month statutory notice in accordance to **section 90(3) of the Land Act** dated 14th February 2019 sent via registered post to the plaintiff. Upon the lapse of 90 day notice, the 1st defendant issued to 40 days' notice dated 24th May 2019 to sell in accordance to section 96(2) of the Land Act. The 2nd defendant then issued 45 days Redemption Notice and a Notification of Sale on 16th April 2020 to the plaintiff via registered post on 16th April 2020 and by emails of the plaintiff and its directors stipulating that the property would be auctioned

on 26th June 2020. The defendants submit that in the event the court finds that the statutory obligations were not complied with, the appropriate remedy would be to stall the sale pending issuance of fresh notices and not to grant an injunction. To buttress this point, the defendants rely on the case of **Olkasai Limited vs Equity Bank Limited [2015] eKLR.**

16. The defendants further submit that the property has been valued and they produced a Valuation Report dated 7th April 2020 by Claytown Valuers Limited pursuant to **section 97 of the Land Act.** It is the defendants' case that the plaintiff was served with a list of documents that contains a valuation report and they did not contest the estimates contained in the report. Further, the plaintiff has not questioned the contents of the report or the qualifications of the valuers. Thus, the defendants have discharged their duty as set out in **section 97 of the Land Act**. The defendants refer to the case of **Zum Investment Limited vs Habib Bank Limited [2014] eKLR** to support their contention.

17. The defendants state the plaintiff has numerously admitted to being indebted to the 1st defendant and made no effort to repay the debt. It breached the terms of offer for restructure of the credit facility and the term of the loan lapsed without any payment being made by the plaintiff. Since the plaintiff is indebted to the defendants, the defendants submit that the plaintiff is not entitled to an injunction and they should then sell the property by way of public auction. The defendants refer to the case of **Showind Industries vs Guardian Bank Limited & Another (2002) 1 EA 284** and **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** and submit that a statutory power of sale arose, and they had a right to exercise it. The 1st defendant contends the plaintiff as at 25th January 2019 owes the 1st defendant Kshs. 31,344,405.59/- which is a clear case of default and as such, an injunction would not be justified.

18. In any event, the defendants submit that once a property is offered to a bank as security, it becomes the property of the bank subjected to sale upon default. Reference is made to the cases of **Andrew Muriuki Wanjohi vs Equity Building society Ltd & 2 Others [2006] eKLR** and **John Nduati Kariuki t/a Joheser Merchants vs National Bank of Kenya Ltd [2006] eKLR**. The defendants further rely on the case of **Mrao Ltd vs First American Bank of Kenya & 2 Others (2003) KLR 125** and submit that no right of the plaintiff has been infringed. On the contrary, the plaintiff is still holding the facilities issued and continues to hinder the sale of the security property thereby infringing the right of recovery by exercise of power of sale of the charge.

19. The defendants state that an injunction is an equitable remedy and therefore the plaintiff ought to come with clean hands. Thus, the plaintiff cannot fail to pay its debt and then claim for equity. Further, the plaintiff contrary to clause 6 of the Letter of Offer dated 20th December 2017 failed to disclose to the 1st defendant that the charged property was sold and that there is a pending suit being Nanyuki CMCC No. 7 of 2020 in regards to the suit property. The defendants rely on the case of **Delphin Kanuu Kamau vs Fina Bank Limited [2020] eKLR** and submit that the plaintiff has admitted to the debt it owes and it has transferred a portion of the charged property without obtaining the consent of the 1st defendant.

20. It is the defendants' case that the notices served upon the plaintiff are good and valid for all purposes and lack of service upon the guarantors does not vitiate the notices. In any event, the defendants state that there is nothing in the charge to say that the 1st defendant must exhaust other remedies that it has. In this respects, the defendants rely on **section 104 of the Land Act** and the case of **Milimani Motors (K) Limited vs Kenya Commercial Bank Limited [2014] eKLR.**

21. The defendants further submit that although the plaintiff had the option of repaying the facility from the proceeds of the sale of the cottages as provided under Clause 5 of the Letter of Offer dated 28th May 2015, the facility was under all circumstances to be repaid within 12 months after the 15 months' moratorium. The plaintiff through PW1 further stated that the project was deserted and thus no proceeds of the sale of the cottages were obtained.

22. The defendants state that the plaintiff failed to honour the terms of the Letter of Offer dated 20th December 2017 and is therefore estopped from alleging breach of contract. The defendants further state that the letter of offer dated 18th May 2015 was valid by the letter of offer dated 20th December 2017 for a sum of Kshs. 29,213,335/-. As such, the defendants contend that the plaintiff has failed its case and has relied on deliberate misinformation and misrepresentation in an attempt to mislead the court. The defendants pray that the suit be dismissed with costs.

Issues for determination

23. On perusal of the pleadings and submissions herein as well as listening to the oral evidence of both parties the following are the issues that arise for determination:-

a. Whether the plaintiff is entitled to the order sought of a permanent injunction against the defendants not to sell the security;

b. Whether the intended sale ought to be declared null and void.

c. Who bears the costs of the suit.

The Law

24. Before discussing the issues for determination, it is prudent the court addresses the contention by the defendants that the suit ought to be struck out pursuant to non-compliance with **Order 4 Rule 1 (4) of the Civil Procedure Rules**. **Order 4 Rule 1(4)** provides:-

Where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorised under the seal of the company to do so.

25. Case law holds the position that the mere failure to file the resolution of the company together with the plaint does not invalidate the suit

as such a resolution could be filed at any time before the suit is fixed for hearing. **Leo Investments Ltd vs Trident Insurance Company Ltd [2014] eKLR and Republic vs Registrar General and Others (2005) eKLR.**

26. The question which then arises in this case is whether the plaintiff obtained the board authorization to commence this suit? On perusal of the plaintiff's pleading, it is evident that it did not file the resolution of the company authorizing the filing of the suit and the appointment of the advocates. Further, on cross-examination, PW1 stated that there was an agreement by three directors to file a suit but they did not prepare a resolution. Thus, I find that the plaintiff did not comply with **Order 4 Rule 1(4) of the Civil Procedure Rules.**

27. Although I am cognizant of the fact that courts have held that seeking such authority before the institution of a suit is mandatory and that the repercussions of not complying with **Order 4 Rule 1(4)** are striking of the suit, which would determine this case I seek to be persuaded by the decision of **Spire Bank Limited vs Land Registrar & 2 Others [2019] eKLR** where the court in discussing Order 4 Rule 1(4) stated as follows:-

> **It is essential to appreciate that the intention behind Order 4 Rule 1(4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."**

28. Relying on Article 159 of the Constitution and on the above principle, I find the omission to file a resolution not fatal to the plaintiff's case and therefore decline to strike it out.

Whether the 1st defendant followed the procedures in claiming to exercise its statutory power of sale

29. It is not in dispute that there was a loan agreement between the parties for the sum of Kshs. 250,000,000/= to be repaid within 27 months and the security for the loan was Land Parcel No. NANYUKI/MARURA BLOCK 4/04 (Kimuri). This was followed by a restructuring agreement of the funds disbursed to the plaintiffs amounting to Kshs.29,231,335/=. This sum together with interests of 16.5%per annum and the default in repayment is the subject of this cause.

30. It is also not in dispute that the loan has not been fully paid and there is still a substantial amount owing to the 1st defendant. What is in contention is the salient terms of the loan agreement which the plaintiff claims the 1st defendant breached and as such was precluded from exercising its statutory powers of sale. According to the plaintiff, the 1st defendant did not give them a 6 month notice before altering the initial offer of Kshs. 250M; the moratorium period of 15 months was never observed by the 1st defendant; the amount of Kshs. 27,979,227 was issued late after the initial offer; no valuation was carried out on the suit property and failing to issue the statutory notices.

31. On perusal of the Letter of Offer dated 28th May 2015, Clause 5 provides:-

> **The facilities totalling Kshs. 250,000,000/- may be cancelled or the terms upon which the same is available altered at the absolute discretion of the Bank, subject to 6 months' notice.**
>
> **The Term Loan Facility will be repaid within a maximum period of 27 months from the disbursement date. Moratorium period will be 15 months during the construction period and principal repayment period of 12 months successively. Interest on the outstanding principal to be serviced on monthly basis when due (during and after moratorium period) while principal payment shall be via bullet principle payment with an option of paying down the amounts upon sale of cottages and from other incomes within 12 months after moratorium period.**
>
> **It is the express condition of our Advances offer that the entire outstanding facility becomes immediately due and payable should repayment of any instalments or interest fall into arrears.**

32. Clause G6 provides:-

> **Customers' contribution to be evidenced proportionately to the bank financing which will be released in stages.**

33. Further the Offer for Restructure of Credit Facility dated 20th December 2017 Clause 5 provides:-

> **The facility is repayable on demand and without notice notwithstanding any other term or condition herein set out. Subject always to this condition, the loan facility will be for a maximum period of 6 months. The principal amount will be paid via bullet payment on expiry of the 6 months.**

34. According to the 1st defendant, the moratorium period was to end in September 2016. The parties are in consensus that the first disbursement was made on 17/7/2015 and thus 15 months from the said date runs to 17/10/2016. A repayment period of 12 months on the principal amount was provided for on the principal amount. Thus, 12 months from the said date would bring us to 17/10/2017. In that regard, I find that the 1st defendant breached the terms of the contract by issuing a statutory notice on 3rd May 2016.

35. The plaintiff witness admitted in testimony that they were to give their part of their contribution but they did not because they had no

sales. It is not in dispute that the clause G6 was pegged on the plaintiff making its contribution which was not complied with. The initial loan was restructured on request by the plaintiff which step affected the original loan. It is my considered view that the plaintiff has not established that the 1st defendant breached clause 5 and G6 of the agreement.

Statutory Notices.

36. It is the plaintiff's submission that the respondents did not issue them with the statutory notices as provided for under **section 90 of the Land Act, section 96(2) & (3)(h) and 97(1) (2) of the Land Act.**

37. Section 90(1) of the Land Act provides:-

> **If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the charge may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.**

38. Section 96(1) of the Land Act 2012, states as follows:-

> **1. Where a charger is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargee under section 90(1), a charger may exercise the power to sell the charged land.**

39. Once the charge has decided to exercise its statutory power of sale, **section 96(2) of the Land Act** puts another caveat that:

> **2. Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.**
>
> **3. A copy of the notice to sell served in accordance with sub section (2) shall be served on-**
>
> **h. Any guarantor of the money advanced under the charge;**

40. Section 97 of the Land Act provides:-

> **1. A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any charge under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of the sale.**
>
> **2. A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.**

41. The 1st defendant issued the first statutory notice on 3rd May 2017 pursuant to section 90 of the Land Act and thereafter a notice on 18th August 2017 under section 96(2) of the Act. The loan agreement provided for 15 months moratorium after the first disbursement of funds which both parties agree was 17/7/2015. Thus, on the fifteen (15)months from the said date would bring us to 17/10/2016 when the moratorium period was to end. The loan agreement further provided that there shall be a 12 months repayment period on the principal amount upon expiry of the moratorium. Thus, 12 months from 17/10/2016 would bring us to 17/10/2017. In my considered view, the notices dated 3rd May 2017 and 18th August 2017 were therefore in breach of the loan agreement and not in accordance with the initial agreement.

42. The plaintiff then wrote to the 1st defendant on 6th December 2017 requesting for a restructure of the loan which was granted vide letter of offer dated 20th December 2017 for Kshs. 29,213,335/- payable in 6 months. The 1st defendant further extended this period to a further 6 months vide its letter dated 28th June 2018. The plaintiff's account fell into arrears and the 1st defendant commenced the exercise of its statutory power of sale by issuing the statutory notice dated 14th February 2019 pursuant to section 90 of the Act and then issued a 40 day Notice to Sell dated 24th May 2019 under section 96(2) of the Land Act. The said notices have been issued via registered post and the defendants attached certificates of postage to prove service. In my view, these notices were validly and procedurally issued.

43. The 1st defendant in my view complied with **section 97 of the Land Act** upon attaching a Valuation Report from Clayton Valuers Limited dated 7th April 2020. Further, the plaintiff was served with the 45-day redemption notice from the 2nd defendant which clearly states that the property was valued by Clayton Valuers Limited and indicates the market and forced sale value. The plaintiff did not contest the value of the property or the contents of the report.

44. On the issue of non-compliance of **section 96 (3)(h) of the Land Act,** the 1st defendant affirms that it did not serve the guarantors but it argues that there is nothing in the charge that provides that the 1st defendant ought to exhaust other remedies it may have under the agreement. It relies on **section 104 of the Land Act** and states that if justice demands, a chargee will be given the green light to exercise its statutory power of sale even where a notice is defective or service inadequate. In my considered view, I find that the 1st defendant failed to comply with section 96(3)(h) of the Act by not serving the guarantors and therefore the statutory power of sale did not crystallize. I therefore find that the 1st defendant ought to issue and serve the guarantors pursuant to **section 96(3)(h) of the Land Act.**

Whether the court should issue a permanent injunction

45. The plaintiff is seeking a permanent injunction which is an equitable order from this court. It is trite law that a party who seeks equity must do equity. It is not in dispute that the plaintiff has not repaid the outstanding loan as per the agreement. The plaintiff vide its letter dated 24th April, 2020 requested the 1st defendant to suspend the redemption notice for a period of 4 months to enable it sell the property which indicates an admission of the debt. The plaintiff accommodated by the defendant by being given extensions on two occasions but from the time it was served with the requisite notices, no effort has been made to repay the debt.

46. Further, the defendants allege that the plaintiff sold a portion of the charged property and there is a pending suit CMCC No. 7 of 2020 Nanyuki over the unauthorised sale of the said property. This is because the plaintiff breached clause 6 of the agreement by failing to obtain the consent from the 1st defendant prior to the sale of the suit property. This contention was made in the 1st defendant's pleadings, it was not interrogated at length during trial.

47. The plaintiff is before this court seeking for a remedy as set out in the plaint. The question is whether he has come with clean hands. It is not in dispute that the plaintiff has not made any attempt to clear the loan even after selling part of the security to repay the loan, did not utilise the funds to repay the outstanding loan.

48. As I have already pointed out, the plaintiff has breached some clauses in the agreement as explained in the foregoing analysis.

49. The plaintiff has failed to demonstrate good faith as per the maxim: "Equity demands Equity". A party cannot expect justice from a court of law if it has also offended the opposite party.

50. In my considered view, the plaintiff is not entitled to an injunction against the defendant or to any other remedy as prayed in the plaint.

51. The plaintiff's suit is therefore unsuccessful and it is hereby dismissed. The defendant having breached some clauses in the agreement is not entitled to costs.

52. However, having found that the statutory notices were not issued according to the law, I hereby put the sale of the security by public auction on hold for a period of 90 days pending compliance with the law on part of the defendant. Thereafter, the sale of the security may be done.

53. Each party to meet their own costs of the suit.

54. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 16TH DAY OF NOVEMBER 2021

F. MUCHEMI

JUDGE

JUDGEMENT DELIVERED THROUGH VIDEO LINK THIS 16TH DAY OF NOVEMBER 2021