



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 85 OF 2019

KENYA WOMEN FINANCE MICRO FINANCE PLC.....APPELLANT

VERSUS

AGNES THIRINDI SAMMY.....1ST RESPONDENT

CHARLES MUTUMA.....2ND RESPONDENT

JUDGMENT

By an application dated 14th day of May 2019 the 1st Respondent/Plaintiff in Maua CMC ELC C.No. 82 of 2019 sought to restrain the Appellant itself, agents, employees or any other person acting at its behest from entering, auctioning, selling, dealings, trespassing over any other manner interfering with LR No. Amwathi/Maua/3058 pending hearing and determination of this suit.

The application was opposed vide Replying affidavit sworn on 29th May 2019 by Jeremiah Kanu Muriithi the Credit Risk Manager for the Appellant in Mount Kenya Region.

The Application was canvassed by way of written submissions which the trial magistrate considered and delivered a ruling on 24th June 2019 granting an order of temporary injunction which was to lapse 6 months from 24.6.2019.

Being aggrieved by the ruling of the trial magistrate the Appellant filed the appeal herein on (11) grounds set out in the memorandum of Appeal.

The Appeal herein was canvassed by way written submissions. The duty of this court is to re-look the evidence on record in the trial court and the independently consider whether the ruling of the trial magistrate should be upheld or set aside.

Having considered the Ruling of the trial Magistrate and the application and submissions in the Lower court as well as the submissions in support and against the appeal herein. This court is of the view that the trial magistrate did not properly apply the principles of injunction as ennuated in the land Mark case if Giella vs Casman Brown [1973] EA for reasons the Respondent is not the Registered owner of the suit property and that her remedy lay in clause 7 of the agreement for sale of land annexures GTS -1-it was therefore wrong to restrain the Appellant from exercising statutory power of sale in the circumstances. The trial Magistrate issued temporary injunctions orders to last for 6 months meaning that by 24th day of January 2020 the orders will have lapsed but didn't say why that condition was put.

The appeal herein succeeds. However, each party will bear their own costs.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 16TH DAY OF JANUARY 2020.

In the presence of :

C/A: Kinoti

Appellant: Mr Kimaita Advocate

1st Respondent: M/s Kimathi & Mutembei Advocate – No appearance

2nd Respondent:

HON A. ONG'INJO

JUDGE