

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL CASE NO.10 OF 2019

GRACE MOKEIRA.....APPLICANT/PLAINTIFF

VERSES

TIMOTHY BARASA WABOBWA.....1ST DEFENDANT/RESPONDENT

EQUITY BANK LIMITED.....2ND DEFENDANT/RESPONDENT

RULING

1. The Notice of Motion by the applicant dated **2nd October, 2019** prays that this court does grant temporary orders of injunction to restrain the 1st Respondent from exercising its statutory powers of sale over Land Parcel Number **KITALE MUNICIPALITY BLOCK 15 /KOITOGOS/2929** pending the hearing and determination of this application and the main suit.

2. The application is supported by the annexed affidavit of the Applicant sworn on the same date. The Applicant has demonstrated in the said affidavit that the suit property is registered in the name of the 1st Respondent whom she entered into a sale agreement with on the **25th March 2015** for the purchase of the same. She went on to show that she purchased the land for a total sum of kshs. 770,000 which amount she paid in five instalments.

3. It was agreed between the two that the 1st defendant was to complete the loan facility using the aforesated purchase consideration and have the title released to the applicant. The 1st respondent did not pay the 2nd Respondent as agreed which led it to advertised the security for sale. When the applicant saw this she filed this suit and the application praying for the equitable relief of injunction.

4. The 2nd Respondent vide the sworn affidavit of **LUCY KAMAU** dated 16th December, 2019 has stated that the application is not meritorious for the simple reason that the loan taken by the 1st Respondent and charged the land as a security has not been paid. That the applicant is not privy to the contract between the respondents. She said that the 2nd Respondent is a stranger to the agreement between the two. She prayed for the application to be dismissed.

5. The court has perused the application as well as the attached annexures to the various affidavits. It is true that the 2nd Respondent is not a party to the agreement of sale between the Applicant and the 1st Respondent. Further it appears from the agreement that the 1st Respondent did not honour the part of the agreement where he was expected to settle the loan so as to have the title discharged and subsequently released to the Applicant.

6. What then is the fate of the Applicant? Her position to the extent that she is not a party to the charge agreement is that of a stranger and an intermeddler. She should seek her recourse from the 1st Respondent. In any case the 1st Respondent has not challenged the charge contract between him and the 2nd Respondent. He has not in fact participated in this proceedings.

7. Perhaps the Applicant ought to have been more careful so as to ensure that the 1st Respondent paid the loan from the amount dispersed to him on instalments basis.

8. In the premises, I do not find merit in the application. The same is dismissed with cost which should be paid by the 1st Respondent.

9. The court has noticed the monetary value involved herein. Let this suit be transferred to the lower court here at Kitale for determination.

Dated signed and delivered via Zoon at Kitale on this 5th day of May 2020.

H. K. CHEMITEI

JUDGE

5/5/2020