



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 37 OF 2018

PATRICK GITHINJI NDICHU.....1ST PLAINTIFF

FLORENCE WAITHERERO MAINA.....2ND PLAINTIFF

SOLEX BUILDING CONTRACTORS LIMITED....3RD PLAINTIFF

- VERSUS -

EQUITY BANK (K) LIMITED.....1ST DEFENDANT

ANTIQUA AUCTIONS.....2ND DEFENDANT

RULING

1. It is not denied that **Solex Building Contractors Limited**, the 3rd plaintiff, was granted financial facility by **Equity Bank (Kenya) Limited**, the 1st defendant (the Bank). That facility was secured by a legal charge over the property title number 13868/11, which property is registered in the names of **Patrick Githinji Ndichu**, the 1st plaintiff and **Florence Waitherero Maina**, the 2nd plaintiff. By a Ruling of this court dated 1st October 2019 this court declined to grant an interlocutory injunction, to the 1st and 2nd plaintiff, to restrain the Bank from selling the charged property in exercise of its statutory power of sale.

2. The application, which is the subject of this Ruling is filed by the Bank and is dated 10th December 2019. The Bank seeks orders that it be allowed, together with its servants or agents "to peaceably and by use of reasonable force enter and/or gain possession of the charged property and the premises erected" on the charged property and premises thereon. In the alternative the Bank seeks an order that the plaintiffs do give, the Bank's servants or agents, and yield vacant possession of the charged property and premises thereon. In order to execute those orders, the Bank further seeks the officer in charge of station, at Karen Police Station, be directed to supervise the enforcement thereof.

3. The application is supported by the affidavit of Peter Karuma the Bank's Credit Manager at its Community Branch. He deponed that the plaintiffs had neglected refused and/or failed to honour their financial obligation to the Bank and that accordingly the Bank's Statutory Power of Sale had arisen. The Bank has issued the requisite legal Notices. That the Bank's attempt to exercise its power of sale of the charged property has been frustrated by the plaintiffs' failure to give prospective buyers unimpeded access to the charged property and hence why the Bank seeks possession of the charged property.

ANALYSIS

4. The Bank correctly stated that the plaintiffs have admitted that the 3rd plaintiff was afforded from time to time banking facilities by the Bank. Those facilities were secured by the legal charge over the charged property.

5. It needs to be appreciated that the application is before me when the country, and indeed the world, is facing the COVID-19 pandemic. During this time the Ministry of Health has given various directives with a view to combating the pandemic which directives include social distancing. Social distancing has involved the closure of schools, businesses, cancellation of events and movement restrictions, amongst others. The government has also restricted the movement of people in and out of certain parts of the country, Nairobi County being one such places. The charged property is within Nairobi County.

6. It is also common knowledge that COVID -19 is primarily transmitted through droplets or direct contact of infected persons or by contact with contaminated objects.

7. It is in view of the above, and because of the risks likely to entail with several people gaining access of the charged property, which is the matrimonial home of the 1st and 2nd plaintiff, that I will decline to grant the orders sought. The orders sought may go contrary to the ministry of health directives. Although I will decline to grant the orders the Bank will have liberty, once the situation relating to the pandemic normalises, to seek appropriate orders.

8. In the end, I decline to grant the orders sought in the Notice of Motion dated 10th December 2019. The 1st defendant is however granted leave to seek similar orders once the threat of COVID-19 pandemic are over. The costs of the Notice of Motion shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of JUNE 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **11th** day of **June, 2020**.

MARY KASANGO

JUDGE