



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL DIVISION

COMMERCIAL CASE NO. E522 OF 2020

BALAJI FLOWERS LIMITED..... PLAINTIFF

VERSUS

PARAMOUNT BANK LIMITED... DEFENDANT

R U L I N G

1. Before me is a Motion on Notice dated 30/11/2020 brought, *inter alia*, under **Order 40 of the Civil Procedure Rules**. In the Motion, the plaintiff seeks orders of injunction to restrain the defendant from auctioning the properties known as **LR. No. Nyandarua/Gilgil/931** and motor vehicle registration no. **KBZ 153X**.
2. The application was brought ex-parte under a certificate of urgency on 8/12/2020 and sought to stop an auction scheduled for tomorrow 11/12/2020. I certified the same urgent and directed that it be served for inter-partes hearing this morning at 9.00am.
3. At the hearing, the defendant had filed a replying affidavit in opposition to the application. I heard arguments from both **Mr. Wasonga**, Learned Counsel for the plaintiff and **Mr. Kihiko**, Learned Counsel for the defendant. I have also carefully considered the averments of the parties on record.
4. The plaintiff's case is that the defendant did not serve the statutory notice under **section 90 of the Land Act, 2012** and a notice under **section 96(2) of the Land Act**. The plaintiff also alleges that the redemption notice dated 3/10/2020 was defective, in that it gave the plaintiff less period than the 45 days required. It was further alleged that the valuation given to the suit property is at an undervalue and that there is a proposed buyer of the property at US\$2.5million.
5. The defendant has on its part contended that it has issued all the required notices and that its right to exercise the statutory power of sale has arisen.
6. This is an injunction application. The plaintiff is required to establish a prima facie case with a probability of success, that if the orders sought are not granted it will suffer loss that cannot be compensated by an award of damages. If the Court is in doubt, it will determine the matter on a balance of convenience. **See Giela v. Cassman Brown case.**
7. There is no dispute as to advances. There is also no dispute that there has been default. The evidence is all there for everyone to see. The defendant has alleged that the amount due is in excess of **US\$1.7 million**.
8. I have looked at the documents produced by the defendant. I am satisfied that the defendant has shown that it issued the requisite notices under the law. The defendant produced a certificate of posting as "MR8". The address used has not been denied.
9. From the evidence on record, I am satisfied that the necessary notices have been issued by the defendant. The contention of under valuation and existence of a ready buyer are but mere excuses. To my mind therefore, the plaintiff has not demonstrated a prima facie case with any probability of success.
10. As regards the loss to be suffered, having offered its property as security for the advances, the plaintiff had converted the property into a merchantable commodity. The value thereof is known and the defendant can pay off the same.
11. As to the balance of convenience, the same tilts in favour of allowing the defendant to recover its outlay for the benefit of its depositors.

12. Accordingly, the application is without merit and I dismiss the same with costs to the defendant.

DATED and DELIVERED at Nairobi this 10th day of December, 2020.

A. MABEYA, FCIArb

JUDGE