



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**HCC NO. E 209 OF 2019**

**SEMA HEALTH PRODUCTS.....PLAINTIFF/RESPONDENT**

**VS.**

**HOUSING FINANCE COMPANY**

**OF KENYA LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**TAIFA AUCTIONEERS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**NJOGU-INI BUILDING INVESTMENT**

**LIMITED.....PROPOSED 3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. There has been default. It is admitted.
2. There has been a consent. It has been breached. It is admitted.
3. No reason at law is put forward to injunct the auction due for tomorrow 4<sup>th</sup> December 2019. No allegation of non-service of statutory notices or such other reasons are argued.
4. All the Plaintiff seeks is indulgence from this Court and the Bank. There has been previous indulgence by the Bank.
5. When the Plaintiff charged the property, it was within its contemplation that the property would be sold in the event of default. There is now default and the event upon which a sale can take place has occurred. Miss Abuya tells this Court that a sale is a sale whether it will happen by public auction or the private arrangement proposed by the Plaintiff. Yes both are sales but the private arrangement may achieve a better deal for the Plaintiff because it may get a better price than a forced sale value. But the luxury for a better bargain may have past because the Plaintiff has had more than enough time to conclude a private treaty sale.
6. I will allow the auction to proceed. I trust that the Bank is well aware of the consequences of a sale at an under value. I also trust that the Plaintiff would be alive to the remedy available to it in the event of such a sale.
7. The Notice of Motion dated 27<sup>th</sup> November 2019 is without merit and is dismissed with costs.

**Dated, Signed and Delivered in Court at Nairobi this 3<sup>rd</sup> Day of December, 2019**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Kahuthu for Plaintiff

Abuya for Karungo for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Court Assistant: Nixon