



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 335 OF 1997

M M.....APPELANT/APPLICANT

- V E R S U S -

N W.....PETITIONER

HOUSING FINANCE COMPANY OF KENYA LTD.....1ST RESPONDENT

KENYA BUILDING SOCIETY LTD.....2ND RESPONDENT

TAIFA AUCTIONEERS.....3RD RESPONDENT

CHRISTOPHER AVISA.....4TH RESPONDENT

KENYA COMMERCIAL BANK.....5TH RESPONDENT

ORDER DIRECTIONS

Brief Background to this case.

1) The suit between the parties herein was commenced with a divorce petition filed by N W M, the petitioner against Mr. M M as the respondent. The determination of the suit was vide Divorce Cause No.122 of 1997. The trial Magistrate before delivering here/his decision on the Divorce Cause, gave a directive that the respondent should vacate the matrimonial property namely; **L.R No. Nairobi/Block [particulars withheld]** failure to which, the police would be deployed to ensure compliance.

2) The respondent in the Divorce cause, Mr. M M moved to court to resist the orders to vacate the matrimonial home vide HCCA No 335 of 1997. The matter was heard where Justice Mbogholi, issued an order to maintain the status Quo until final determination of the said Divorce cause.

3) It should be noted that the matrimonial property **i.e L.R No. Nairobi/Block [particulars withheld]**, was acquired during the subsistence of the marriage by the parties where who were jointly advanced a loan of Ksh.282,060/= with a charge being registered against the said property by Housing Finance Kenya Ltd (H.F.C.K), now Housing Finance as the chargee. The parties defaulted in servicing the loan and in exercise of its statutory power of sale, the chargee property was sold on 28th June, 2001 to one Christopher Avisa by the fall of the hammer. The purchase by Christopher Avisa was financed by Kenya Commercial Bank.

4) Mr. M M and Ms. N W did not object to the said public auction. However, at some point, Mr. M felt aggrieved and filed a suit against the sale vide **Commercial Court Suit No.1026 of 2001** where he sought for *inter alia*, a declaration that the sale of **L.R No. Nairobi/Block [particulars withheld]** was illegal. The

defendants named were; Housing Finance of Kenya (H.F.C.K)(K) Limited, Kenya Building Society Ltd, Taifa Auctioneers, Christopher Avisa, Kenya Commercial Bank Limited, being the 1st -5th defendants respectively. The court heard the suit and in the end, the main suit on the property was dismissed by Justice Kamau on the 22nd January, 2015.

5) Pending the hearing and determination of the suit challenging the sale of the property, the Mr. M M filed numerous applications and letters on record. Some of the rulings issued by this court include;

i. A ruling by Justice Ringera (as he then) was delivered on 5th February, 2002 where the Hon. judge granted a mandatory injunction compelling the plaintiff to give vacant possession of the property which had been sold to Christopher Avisa in a public auction.

ii. A ruling by Justice E. K Ogola in which the honourable judge dismissed the plaintiff's application and even made an order that the plaintiff should not file any further application in the registry or otherwise give security for every such application filed in the sum of ksh.100,000/-

6) Mr. M was still relentless and continued filing applications in court seeking orders that could not be awarded given that the suit on property had already been determined. He also filed very many letters of complaints against the police, the judiciary, his ex-wife, the director of criminal investigations as well as the Attorney General's office.

7) He went to the court of appeal with his complaints, where the court of appeal dismissed the said applications with costs in Nairobi Civil Appeal No. 288 of 2008.

8) The recent ruling on record in this matter was delivered by Justice L. Njuguna on 25th February, 2016 where the learned judge dismissed all the applications on the ground that the orders sought were against parties that were not parties to the appeal.

9) Mr. M still being dissatisfied appealed to the supreme court Vide Supreme Court Application No.9 of 2015. The said application was subsequently struck out vide Supreme Court Ruling dated 26th January 2017.

10) The matter in the high court continued via a series of letters that the respondent/complaint/appellant namely Mr. M M complained of how he is dissatisfied in the system of adjudication given to his case.

11) The complaints in the High court were revived via a letter from the appellant in which he sought for inter alia, directions from the court that all the parties should be ordered to meet before a judge of this court for the purposes of execution of all orders given to him from 1998 when the initial suit was filed to date.

On 31st October, 2017 the parties were asked to file reports concerning the status of this dispute.

On 13th December, 2017 Court gave directions that it will peruse the reports filed by the parties and give directions.

I have considered the reports filed by

1. The appellant
2. The 1st Respondent
3. The 4th and 5th Respondent

The summary of the reports are as follows:

1. The appellant- M M

There are false accounts, reports, statements, allegations, documents etc by the respondents and their lawyers that are confusing, misleading and deceiving the courts. The appellant is urging the court to cancel all those documents. This complaints to the court have been done through various letters by the appellant addressed to various offices. The courts should reinstate rights/complaints/ownership/proprietorship/enjoyment/ control of his matrimonial home namely; LR NAIROBI BLOCK [particulars withheld], which the respondents took by force and unconstitutionally, illegally and without following proper procedures. Courts should punish and penalize the respondents for their misconduct.

This court forms the opinion that the appellant's grievances should be determined in the right forum using the right procedure.

2. The report by 1st Respondent- Housing Finance Company of Kenya Ltd is to the effect that the

Appellant is a vexatious litigant and always keeps filing applications before the court without providing security for costs. It is also stated all suits involving Housing Finance Company of Kenya have been dealt with to their logical conclusion and the appellant should not be allowed to keep dragging the defendants/respondents in court for actions not in existence.

3. The reports by 4th and 5th Respondents- Christopher Avisa and Kenya Commercial Bank Respectively indicate that there is no suit as against the 4th and 5th respondents. They have pointed out that there are unpaid costs by the appellant to the 4th defendant of Ksh. 117,500/= plus interest vide the certificate of taxation dated 10th July, 2003. It is also stated that the appellant is abusing the court process by not paying security for costs on any subsequent suits or application the appellant has filed.

Having carefully considered the aforestated reports it is apparent that this was an appeal arising from the decision of the Chief Magistrate in **Divorce Cause No. 122 of 1997**, where it was held that the appellant can only execute the decree in respect of the taxed bill of costs . The applicant can only execute the decree against N W who was the respondent to the appeal and not any other parties named by the appellant who were not parties in the appeal.

The court record reveals that the appellant bill of costs was taxed and he was awarded a sum of Ksh. 311, 290/= in respect of his costs by Lady Justice H.M. Okwengu on 23rd March, 2010.

12) It is abundantly clear that this matter has been conclusively determined by this court, therefore, this court is now *functus officio*. If well advised, the appellant's remedy, if any, lies elsewhere and not before this court. Consequently, no further applications should be entertained without leave of court.

Dated, Signed and Delivered in open court this 6th day of April, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondents