



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.124 OF 2013

CANELAND LIMITEDPLAINTIFF

VERSUS

AFRICAN BANKING CORPORATION LIMITED.....DEFENDANT

AND

STEPHEN ALUOCH KOPOT T/A K'OPOT

& CO, ADVOCATES.....1ST INTERESTED PARTY/APPLICANT

MALKIAT SINGH PADHAL.....2ND INTERESTED PARTY/APPLICANT

RULING

1. Through the notice of motion under certificate of urgency dated 15th July 2016, **Stephen Aluoch Kopot T/A K'opot & Co. Advocates**, the 1ST applicant, seeks to be enjoined in the matter as an interested Party, an order restraining the Defendant from advertising for sale, selling by private treaty or otherwise disposing of **Kisumu Municipality/Block 7/181** in exercise of a Chargee's power of sale unless and until they fully comply with the requirement of **Sections 96 to 98 of the Land Act No.6 of 2012**. The notice of motion is based on the six grounds marked (1) to (6) on its face and supported by the affidavit of Stephen Aluoch K'opot sworn on the 15th July 2016.
2. The application is opposed by the defendant through the replying affidavit sworn by **Douglas Okiring**, the Kisumu Branch Manager of the Defendant's Bank, on the 15th July 2016.
3. **Malkiet Singah Pandhal**, the 2nd Applicant, through the notice of motion, under certificate of urgency dated 26th July 2016 prays to be enjoined as an interested party. He also prays for an order of temporary injunction restraining the Defendant from selling, alienating, disposing off, and or in any other way interfering with his peaceful use and occupation of the land parcels **Kisumu Municipality/Block7/171 and 181**, among others. The application is based on the eight grounds marked (1) to (8) on its face and supported by the affidavit sworn by **Malkiat Singh Pandhal** on the 26th July 2016.
4. The notice of motion is opposed by the Defendant through the replying affidavit sworn by **Brenda Marangu**, the Legal Manager, Securities and Documentation of the Defendant, sworn on 9th August 2016.
5. The two applications came up for directions on the 28th July 2016 in the presence of Mr. Kopot for the

1st Applicant, Mr. Anyumba for the 2nd Applicant and Mr. Menezes for the Defendant and directions on service of application and replying papers were given. The court also gave directions on filing of written submissions. The consent letter dated 19th July 2016 enjoining the 1st applicant. for purposes of the application and staying of the sale in respect of **Kisumu Municipality/Block 7/181** was also endorsed.

6. The counsel for the 1st Applicant filed their written submission dated 28th September 2016 in respect of the notice of motion dated 15/7/2017 but no submissions have been filed by counsel for the 2nd Applicant in respect of their notice of motion dated 26th July 2016. The counsel for the defendant filed two separate submissions in respect of the notice of motion dated 15th July 2016 and 26th July 2016.

7. The following are the issues for determination;

- a) Whether the Applicants or any one of them, have established that their participation in these proceedings will help the court determine all the issues before it.
- b) Whether the Applicants or any one of them, have established a prima face case with a probability of success for temporary injunctive orders to issue at this interlocutory stage.
- c) Who pays the costs of each of the two applications.

8. The court has considered the grounds on each of the notice of motion, affidavit evidence, submissions filed, the court record and come to the following findings;

a) That the 1st Applicant is reportedly a tenant to **Surjit Singh Pandhal and Malkiat Singh Pandhal**, (the 2nd Applicant), who are the registered proprietors of land parcel **Kisumu Municipality/Block 7/181**. The 1st Applicant claim that the Defendant breached **Section 97 of the Land Act 2017** by failing to notify him of their intention to realize the security has no basis in law. The provision of **Sections 96 to 98 of the Land Act No.6 of 2012** deals with the Chargees power of sale, duty of a Chargee exercising the power of sale and power incidental to the power of sale. The Defendant's duty as the Chargee is to the Chargors to whom the statutory and redemption notices had been served. See **Nairobi Mamba**

Village –V- National Bank of Kenya [2002] I.E.A 197 and **Venture Capital and Credit Ltd –V- Consolidated Bank of Kenya** [2004] I.E.A 357.

b) That the 2nd Applicant being one of the registered proprietors of land parcels **Kisumu Municipality/Block 7/181 and 171** had been served with the statutory and redemption notices before the filing of this suit. This is apparent from the affidavits of **Surjit Singh Pandhal** sworn on 22nd February 2016 in support of the Plaintiff's notice of motion of the same date, where at paragraph 4 he annexed the notification for sale, addressed to the 2nd Applicant and himself in his efforts to prove that the Plaintiff had not been served. In the earlier affidavit of **Surjit Singh Pandhal** sworn on 21st May 2013 in support of the first application by the Plaintiff of even date, the said deponent at paragraph 7 acknowledged service of what he called "**purported letter to be a statutory notice under the law (in which) the defendant demanded from the plaintiff the sum of Ksh.28,256,869/=**" At paragraph 9 of the same affidavit the deponent deponed that "**... Defendant then instructed auctioneer to demand from the Plaintiff and its guarantors the sum of Ksh.42,234,450/=...**"

That the foregoing is clear admission by **Surjit Singh Pandhal** that service of the statutory and redemption notices had been served upon him, and by implication his co-guarantor, who is **Malkiat Singh Pandhal**, the 2nd Applicant.

c) That the claim by the 2nd Applicant that he had not been served with the said notices cannot therefore be true and the court agrees with the Defendant's counsel's submissions that the two

Applicants were possibly acting at the behest of the

Plaintiff to delay the Defendant's exercise of power of sale.

d) That this court has already pronounced itself in this matter in the ruling of 8th February 2016. The Plaintiff was not satisfied with the ruling and preferred an appeal to the Court of Appeal through the Notice of Appeal dated 16th February 2016, and filed on 18th February 2016. It is therefore surprising that other interlocutory applications for orders similar to those rejected in the ruling of 8th February 2016 continue to be filed in this suit instead of pursuing the appeal and or those orders from the Court of Appeal. This is especially so when one considers that the Plaintiff's application to stay the orders of 8th February 2016 was declined by this court through the ruling of the 13th July 2016.

9. That flowing from the foregoing the court finds no merit in the two notices of motion dated 15th July 2016 and 26th July 2016 and are dismissed with costs to the Defendant.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 1ST DAY OF MARCH 2017

In presence of;

Plaintiff	Absent
Defendant	Absent
1 st Applicant	Absent
2 nd Applicant	Absent
Counsel	Mr. Menezes for the Defendant.

Mr. Ngala for Kopet for 1st Applicant

Mr. Anyumba for the 2nd Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

1/3/2017

1/3/2017

S.M. Kibunja Judge

Oyugi court Assistant

Mr. Menezes for Defendant

Mr, Anyumba for 2nd Applicant

Mr. Agala for Kopot for 1st Applicant

Court: Ruling dated and delivered in open court in presence of

Mr. Menezes for Defendant, Mr. Ngala for Kopot for 1st Applicant and Mr. Anyumba for 2nd Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

1/3/2017