



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**E& L CASE NO 192 OF 2016**

**GERVASIO KALONZO.....PLAINTIFF**

**VERSUS**

**BONIFACE MWENDA .....1ST DEFENDANT**

**FAMILY BANK.....2ND DEFENDANT**

**R U L I N G**

1. This Notice of Motion dated 27th September, 2016 seeks the following orders:-

(1) **THAT** this Honourable Court be pleased to certify this application is urgent and the same be heard ex-parte in the first instance.

(2) **THAT** this Honourable Court be pleased to issue temporary orders of injunction restraining the 2nd Defendant either by itself, employees, agents and/or any other person working under its instructions from attaching and/or selling by a public auction the Plaintiff properties known as plot number **NANYUKI MARURA BLOCK 1/207 (ICHUGA)** pending hearing and determination of this application inter-partes and/or until further orders of the Court.

(3) **THAT** this Honourable Court be pleased to issue temporary orders of injunction restraining the 2nd defendant either by itself, employees, agents and/or any other person working under its instruction from attracting and/or selling by a public auction the Plaintiff properties known as plot number **NANYUKI MARURA BLOCK 1 /207 (ICHUGA)** pending hearing and determination of the suit.

(4) Cost of this application be provided for.

2. The grounds in support of the application are:-

(1) Sometimes on 10/09/2015 the Plaintiff surrendered to the 2nd defendant title deed number **NANYUKI MARURA BLOCK 1/207 (ICHUGA)** to secure money advanced to the 1st defendant.

(2) Immediately upon the surrender of the said title deed the 1st defendant had been extended a financial accommodation to the tune of Kshs. 2,000,000 by the 2nd defendant which inter-alia deals with leading loans in Kenya and that the aforementioned financial accommodation was to be settled by monthly installments.

(3) That the Plaintiff further avers that the 1st defendant has been paying all the monthly

installments when they become due and current outstanding balance remains at Kshs. 394,863.71.

(4) On / or about 22/08/2016 the 2nd defendant issued a statutory demand notice in respect of legal charge over suit land in default of paying of the above balance by the 1st defendant.

(5) THAT the 2nd defendant action of threats against me is wrongful and the same should not be allowed.

(6) The Defendants' actions are illegal and inimical to good order in the society and/ or conduct of business relationship unless restrained the plaintiff shall be rendered destitute and homeless.

3. Applicant has also filed a Supporting Affidavit where he has deponed has follows:-

(1) **THAT** I am Plaintiff herein therefore competent to swear this Affidavit.

(2) **THAT** Sometimes on 10/09/2015 I surrendered to the 2nd Defendant title deed number NANYUKI MARURA BLOCK 1/207 (ICHUNGA) to secure money advanced to the 1st defendant branch office Nkubu.

(3) **THAT** immediately upon the surrender of the said title deed the 1st defendant had been extended a financial accommodation the tune of Kshs. 2,000,000 by the 2nd defendant which inter-alia deals with leading loans in Kenya and that the aforementioned financial accommodation was to be settled by monthly installments.

(4) **THAT** the 1st defendant has been paying all the monthly installment when they become due and current outstanding balance remains at Kshs. 394,863.71.

(5) **THAT** on/or about 22/08/2016 the 2nd defendant issued a statutory demand notice in respect of legal charge over suit land in default of paying of the above balance by the 1st defendant.

(6) **THAT** the 2nd defendant actions of threats against me is wrongful and the same should not be allowed.

(7) **THAT** the defendants' actions are illegal and inimical to good order in the society and/or conduct of business relationship unless restrained the Plaintiff shall be rendered destitute and homeless.

(8) **THAT** since I have paying all monthly installments to date and its imperative the defendant be restrained by an order of the Court.

(9) **THAT** what is deponed herein above is true to the best of my knowledge, information and belief.

4. It appears that defendants have not filed any papers in respect of the Motion of 12:10:16 neither have defendants filed any pleadings so far.

The Application of 27:09:16 is hence unopposed. I however note that the application was filed under a Certificate of Urgency which means that applicant wanted the matter to be handled speedily. After obtaining nterim Orders on 23: 11: 2016 applicant was not vigilant to ensure that the Respondent had been served by 05.12.16. As such, the Interim Injunctive Orders of 23"11: 16 were vacated on 05:12:16.

With this history, the Court proceeds to grant Orders as follows:-

***(1) This Court hereby issues temporary Orders of Injunction restraining the 2nd defendant either by itself, employees, agents and /or any other person working under its instructions from attaching and or selling by Public Auction THE Plaintiffs properties NANYUKI/MARURA***

**BLOCK 1 /207 (ICHUGA) for a period of 5 (five) months.**

**(2) Applicant is to move the Court to ensure that pleadings close, and that pre-trial directions are take.**

**DELIVERED IN OPEN COURT AT MERU THIS 2ND DAY OF MARCH, 2017 IN THE PRESENCE OF:-**

CA: Kananu

Mutungu h/b Mugambi Kiogora for Plaintiff

Defendants absent

**L.N. MBUGUA**

**JUDGE**