

- buyer who is willing to purchase the suit property at an amount enough to repay the loan. It is the plaintiff's case that the defendant, by threatening to sell the suit property is acting in bad faith and in disregard of the aforesaid agreement. It is for this reason that the applicant seeks the orders of this court to stop the sale and to allow the plaintiff to sell the property to the said identified buyer.
4. The Bank Respondent opposed the application vide a Replying Affidavit sworn by MUSA DUMBUYA on 16th September 2015. The deponent states that he is the Head, Remedial and Collections of the 1st Respondent Bank and that he is familiar with the facts in disputes herein. The respondent denies the allegations that they did not give statutory notice to the applicant. The Respondent also denies the existence of any negotiations to sell the suit property to a third party.
 5. Parties filed submission which I have considered. In my view, the following are the issues for determination;
 - i. Whether the Plaintiff/Applicant has admitted to debt.
 - ii. Whether the 1st Respondent Bank served valid statutory notices.
 - iii. Whether there are any valid negotiations going on to sell the suit property to a buyer able to pay the amount needed to satisfy the debt.
 6. To answer this first issue, it is not in doubt that the Plaintiff/Applicant has admitted owing the debt. This is clear from the supporting affidavit of Francis Kihonge Ng'ang'a. Indeed the Applicant merely now seeks an opportunity to get a buyer to the suit property so that it can repay the said loan. So, the debt herein is admitted. If there is any doubt on the issue, then the correspondence of pages 63 to 71 of the Replying Affidavit of Musa Dumbuya erases any doubt.
 7. The second issue is whether the 1st Respondent Bank issued valid Statutory Notices before attempting to sell the suit property. The applicant has denied issuance of any Statutory Notices. However, the Bank appears to have fully complied with this requirement. From pages 49 to 59 of the replying affidavit are copies of Statutory Notices. These notices were actually served in two stages. I have no doubt that valid statutory notices were served upon the applicant.
 8. The third issue is whether there are any negotiations going on between the plaintiff/Applicants and a third party to sell the suit property and repay the loan. While the Plaintiff/Applicant alludes to such negotiations, and attaches a copy of an agreement of sale to the effect, it is not evident at all that any such negotiation will mature into an agreement which will yield the money required to repay the debt owed to the 1st Respondent Bank. Indeed, the bank has placed a lot of doubt in any such negotiations.
 9. In the light of the foregoing, this court finds that the debt herein is admitted by the plaintiff, that the banks statutory power of sale has property crystallised and has been properly and regularly exercised pursuant to the issuance of valid statutory notices. In that regard the application has failed the test provided in **Gielle - vs - Cassman Brown** for issuance of temporary injunction.
 10. The upshot of the matter is that the application dated 4th September 2015 by the plaintiff is dismissed with costs to the Defendants/Respondents.

Orders accordingly.

READ, DELIVERED AND DATED, AT NAIROBI THIS 8th DAY OF FEBRUARY 2016.

E. K. O. OGOLA

JUDGE

Ruling Read in open court in the presence of:

Mr. Kamau hb Thangei for Respondent

No Appearance for Applicant

Teresia court clerk

