



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 87 OF 2016**

**ISABELLA NYAMBURA GITAU.....PLAINTIFF/APPLICANT**

**VERSUS**

**CONSOLIDATED BANK OF**

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

**J.M. KARIUKI t/a JO-MWAKA AUCTIONEERS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff/Applicant, **Isabella Nyambura Gitau**, approached the Court under a certificate of urgency, seeking orders that the Court be pleased to grant a temporary injunction restraining the Defendants/Respondents from selling her property known as **LR NO. NGONG/NGONG 51924 (Original Number 14890)** in Ongata Rongai, Kajiado County, pending the hearing and determination of the application dated 23<sup>rd</sup> March, 2016. The application was filed pursuant to Sections 1A, 1B, 2, 3A and 63 (c) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and is premised on the affidavit of the Plaintiff/Applicant annexed thereto.
2. It is the Plaintiff's case that sometime in 2011, she obtained a loan from the 1<sup>st</sup> Defendant against her title for the suit property, and that although there were instances when she was unable to keep up with the payment of the monthly instalments, she made arrangements with the 1<sup>st</sup> Defendant to pay and did make some lumpsum payments in 2014 amounting to about Kshs 3.9 million that substantially reduced the debt. She was thus perturbed to learn, on or about 18<sup>th</sup> March, 2016 from a friend who works for the 1<sup>st</sup> Defendant, that her property was in the process of being offered for sale.
3. The Plaintiff further averred that she visited the bank to follow up on the report and was served with two letters dated 27<sup>th</sup> September, 2013 and 5<sup>th</sup> February, 2016 respectively, the latter of which purported to provide her with 45 days redemption notice ending on 21<sup>st</sup> March, 2016. She deponed that despite her best efforts, the 1<sup>st</sup> Defendant has insisted on having the property auctioned unless the outstanding amount was paid.
4. The application proceeded ex parte after the Court was satisfied that service was effected on the Defendants. The Plaintiff has demonstrated that she was served with a 45 day notice that lapsed on 21<sup>st</sup> March, 2016 and that the threat of sale is real. Accordingly, I would grant prayer (2) of the **Notice of Motion** dated **23<sup>rd</sup> March, 2016** pending the hearing and determination of that application.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1<sup>ST</sup> DAY OF APRIL, 2016.**

**OLGA SEWE**

**JUDGE**