



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO. 324 OF 2010

THERESA STEPHEN KIUNGA.....PLAINTIFF

VERSUS

SAVINGS & LOAN KENYA LTD.....1ST DEFENDANT

KENYA COMMERCIAL BANK LTD.....2ND DEFENDANT

R U L I N G

1. From the pleadings and documents in this matter it is apparent that Teresa Stephen Kiunga the plaintiff and Stephen Michuki Kiunga are co-owners of Parcel No. C.R12723 and sub-division No.2032 original CR 16768. The plaintiff acknowledges that she and her co-owner jointly executed a charge and further charge over that property in favour of the defendant. She however pleaded that the defendants permitted her co-owner to further charge the property without her knowledge or consent. She sought by her prayer in the plaint a declaration that the said charge was illegal and unlawful.
2. This suit has been pending up-to-date. The defendants have filed a Notice of Motion dated 29th January 2014 which is for dismissal of this suit for want of prosecution.
3. The plaint herein was filed on 10th September 2010. The court delivered a Ruling on 29th July 2011 granting plaintiff an injunction restraining the defendants from exercising their statutory of sale over the charged property.
4. The matter was last in court on 18th December 2012 for full hearing but was adjourned in the absence of the parties or their advocates. Plaintiff has not since then taken any step toward fixing this case for hearing.
5. The plaintiff by her replying affidavit deponed that the defendants had given her an undertaking that the charged property would not be sold and had returned to her the title documents of the property. Indeed she stated that the loan, in respect to which the further charge was created had been fully paid. That was the reason the plaintiff gave for not fixing the case for hearing.
6. Having stated so it is un clear why the plaintiff would say in that affidavit that this suit should not be dismissed in order to enable parties negotiate settlement. Plaintiff in so stating failed to say what the negotiations would be directed towards, since the defendants have returned the title documents to her and the loan, according to her is fully paid. To continue to retain this suit on record would be contrary to the provisions of overriding objective of the Civil Procedure Act which requires that there be expeditious and affordable resolution of Civil Dispute. Also the

provisions of Article 159 (2) (b) of the Constitution of Kenya would be violated because justice will be delayed.

7. In the end and because of the above observation the Notice of Motion dated 29th January 2014 is granted to the extent that this suit is hereby dismissed with costs to the defendants. The costs of the Notice of Motion are awarded to the defendants.

So ordered.

Dated and delivered at Mombasa this 2nd day of July 2015.

MARY KASANGO

JUDGE

2.7.2015

Coram

Before Justice Mary Kasango

C/Assistant- Kavuku

For the plaintiff:

For the defendants:

Court

Ruling delivered in their presence/absence in open court.

MARY KASANGO

JUDGE