



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 108 OF 2015

ERDEMANN PROPERTY LIMITED ::::::::::::::: PLAINTIFF

-VERSUS-

DEVELOPMENT BANK OF KENYA LIMITED ::::::::::::::: DEFENDANTS

R U L I N G

1. The application before the court is a **Chamber Summons** dated **2nd April 2015** filed by the Plaintiff. The application seeks the following orders:-
 1. *That this application be certified urgent and be heard ex-parte in the first instance, pending the service thereof upon the Defendant.*
 2. *That pending the inter-partes hearing and determination of this Application or until further orders of this Honourable Court:-*
 - a. *The Defendant, be compelled by an order of the court, inter alia, to deposit in court Kshs.279,680,698.33/= held and fixed in account number 200763032 Development Bank of Kenya or alternatively the amount be deposited in an escrow account to be opened in a different bank from Defendant and to be jointly operated by parties to this suit.*
 - b. *The Defendant, be restrained from blocking and and holding the commencement of liquidation process as provided under the Mortgage Cooperation agreement dated 15/10/2013.*
 3. *That pending the hearing and determination of this suit:-*
 - a. *The account be taken and the Plaintiff and Defendant to jointly appoint a consultant(s) to prepare and file a joint account report on accounts in respect to the status, credits and debits balances, outstanding balances entitled to parties in the line of credit account 200763032 held at Development Bank of Kenya and created under the Mortgage Cooperation agreement 15/10/2013 and that the consultant's joint report be filed and adopted and or certified in court within 21 days.*
 - b. *That all the amounts found to be entitled to the Plaintiff on the joint account report prepared and filed by a joint consultant(s), be released and transferred to the Plaintiff within 7 days pending the hearing of the suit and or referral of the dispute for arbitration.*
 4. *That the Defendant do bear the costs of this Application.*

2. There is another application being Chamber Summons application dated 2nd April 2015 in HCCC No. 107 of 2015 with same parties as herein, also filed by the Plaintiff. That application is substantially similar with the instant application except that there are differences in figures claimed and in the number of houses alleged to have been constructed by the Plaintiff. These applications were heard together with the handwritten proceedings being in the said application in HCCC No. 107 of 2015. I will therefore not write a substantive ruling in this application, but will rather adopt my reasoning in the said application in HCCC No. 107 of 2015.
3. For the reasons given in the said other application I do not find that ample grounds have been advanced for the granting of the orders asked for herein. In the upshot, the Chamber Summons application herein dated 2nd April 2015 is dismissed with costs to the Defendant/Respondent.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 6TH DAY OF OCTOBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Gathogo for the Plaintiff

M/s Mumbe holding brief for Ojiambo for the Defendants

Teresia – Court Clerk