



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 528 OF 2012

MODE DEVELOPMENT CO. LIMITED ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

- VERSUS -

DIPLOMATIC HOUSING & CONSTRUCTION CO. LTD. ::::::::::::::: 1ST DEFENDANT

BALOZI HOUSING CO-OPERATION SOCIETY LTD. ::::::::::::::: 2ND DEFENDANT

R U L I N G

1. This is a Ruling on the Notice of Motion dated 16th May 2012. It is brought under Section 1A, 1B and 3A of the Civil Procedure Rules and Order 22 Rule 48 and Order 6 Rule 3 (1) of the Civil Procedure Rules. The application seeks the following orders:-

- a)** That this application be heard *ex-parte*.
- b)** That a prohibitory order do issue over L. R. No. 12422/600 (I.R. 88318) registered in the names of Balozi Housing Co-operative Society Limited.
- c)** The Plaintiff be allowed to execute for the partial judgment forthwith.
- d)** The costs of this application be in the cause

2. The application is based on the following grounds:-

- a)** Partial judgment was entered in favour of the Plaintiff against the 2nd Defendant for Kshs.9,087,724.50 with interest at court rates from 27th July 2009 until payment in full on 8th December 2011.
- b)** The 2nd Defendant has not settled the said judgment at all.
- c)** That after investigations the Plaintiff has confirmed that the sole asset of the 2nd Defendant/Judgement Debtor capable of satisfying the decree is:- L. R. 124422/600 (I.R. 88318).
- d)** That it is fair and just that a prohibitory order do issue over the said property to preserve the property and the process of execution commences.

3. The application is supported by affidavit of ERICK AGBEKO sworn on 16th May 2010. Annexed to

it are:-

- The court Ruling marked “EA” dated **8th December 2011** under which **Kshs.9,087,724.50** was awarded to the Plaintiff against the 2nd Defendant.
- A copy of search on Title showing the 2nd Defendant as the owner of **L.R. 12422/600 (I.R. 88318)** marked “EA2”.

4. I have considered the application carefully. It is an *ex-parte* process and is not opposed. **Order 22 Rule 48 (1)** states as follows:-

48 (1)

“Where the property to be attached is immovable, the attachment shall be made by an order prohibiting the Judgment Debtor from transferring or charging the property in any way, and all persons from taking any benefit from such purported transfer or charge, and the attachment shall be complete and effective upon registration of a copy of the prohibitory order or inhibition against the title to the property.”

5. The application is well founded. I allow it as prayed with costs in the cause.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 16TH DAY OF JULY 2012

E. K. O. OGOLA

JUDGE

PRESENT:

Njuguna for the Plaintiff

N/A for the Defendant

Teresia – Court Clerk