



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 665 of 2010

DONALD MUTUA MUINDE.....1ST PLAINTIFF

NANCY WAGAKI MUTUA.....2ND PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK.....1ST DEFENDANT

BASELINE LIMITED.....2ND DEFENDANT

RULING

This is an application for an injunction. It is dated 4th October, 2010 and taken out under **Order XXXIX Rules 1 and 3 of Civil Procedure Rules**. The Applicants thereby seek an injunction restraining the Respondents from selling the suit property pending the hearing of the application.

The application is supported by the annexed affidavit of Nancy Wagaki Mutua, the 2nd Applicant herein, and is based on the grounds that the Applicants have never been served with a mandatory statutory notice for sale and therefore the advertised sale by public auction would be illegal, unlawful and otherwise fraudulent.

On their part, the Respondents oppose the application and state that they duly served the statutory notice as by law required.

With leave of the court, the parties herein filed written submissions which I have considered along with the pleadings. In the first instance, I note that the application is fatally defective as it seeks temporary injunctions pending the hearing and determination of this application which is now part. It does not seek any injunction orders pending the hearing and determination of the suit. In the absence of such a prayer, this court lacks the jurisdiction to grant it. Since the application has now been heard and determined, there is nothing more for the court to do with regard to this application.

Even if there was anything else for the court to do, I note from the Respondent's replying affidavit that a statutory notice dated 1st December, 2009, a copy of which is attached, was duly issued and served upon the Applicants by registered post the address used is the same one which the parties had been using for communication between them. For that matter, **Section 153 (c) of the Registered Act (Cap 300, Laws of Kenya)** is to the effect that-

“153. A notice under this act shall be deemed to have been served

on or given to any person-

(a) ...

(b) ...

(c) if sent by registered post to him at his last known postal address or at his last known postal address in Kenya.”

This was followed by a visit by the 2nd Applicant to the Respondent’s offices on an undisclosed date, after which she made an offer by a letter dated 9th April, 2010.

On a balance of probability, I would find that the Applicants were duly served under **Section 153** of the **Registered Act**.

Being of the above persuasion, I find that the application is fatally defective and it is hereby dismissed with costs.

L. NJAGI
JUDGE

DATED and DELIVERED at NAIROBI this 5th day of November, 2012.

ODUNGA
JUDGE