

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE 443 OF 2008

JOHN BUNDI MAGIRIPLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA LTD. 1ST DEFENDANT

ISABEL WARUGURU MWANGI 2ND DEFENDANT

R U L I N G

Notice of motion dated 29/10/2008 seeking orders to evict the plaintiff, its servants, agents or whomsoever now occupying 2nd defendant's property comprised in Title No. Nairobi/Block 82/2190 in Tena Estate, Nairobi.

The grounds are that the 2nd defendant is the bona fide purchaser and registered owner of that title. The application is supported by affidavit of Isabel Waruguru Mwangi, the 2nd defendant/applicant. The applicant swears that she purchased the property at a public auction on 12th January 2007 and that the property was transferred to her by chargee, Co-operative Bank of Kenya Ltd. under chargees powers of sale.

On 30/7/2008 an injunction was issued by High Court restraining the 2nd defendants from interfering with the plaintiff's quiet occupying of the plaintiff of the property until 5/8/08. These orders have been extended from time to time until in this suit the 2nd defendant has filed a defence and counter claim. She was counter-claiming for an order for possession against the plaintiff and mesne profits at the rate of Kshs.12,000/= per month from 1/2/2007 until possession is delivered and costs of the counter-claim.

I have perused the record and I see there are several issues that are to be tried between the parties. The suit is to be tried together, not by installments and it is my view that the parties ought to set the suit down for hearing once and for all as soon as possible.

I find this application premature and the same is hereby dismissed.

It is so ordered.

DATED and DELIVERED at Nairobi this 6th day of May 2009.

JOYCE N. KHAMINWA

JUDGE