

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 211 OF 1997 (O.S.)

KENYA RE INSURANCE CORPORATION.....APPLICANT

Versus

TOM OKELLO OBONDO.....RESPONDENT

Coram: Osiemo J.
Mrs. Kamandefor applicant
Mr. Omuga for respondent
Mr. Onduma -Court Clerk

RULING

This application by way of Chamber Summons was brought under Order VI Rule 13(1) (a) (b) and (d) and Order XII Rule 6 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders that the Defendants defence be struck out and that judgment be entered against the defendant as prayed in the originating summons.

This applications is based on the affidavit of the applicant deponed on 22.9.98 which among other grounds states that the defence does not riase triable issues.

The application is opposed on the ground that the defence raises triable issues which should only be decided after a full trial. More particularly the issue that no first charge has ever been executed by the applicant and registered against him in the property in question as envisaged in the sale agreement.

Consequently no amount of money is outstanding, due and/or payable by him as alleged as no loan has been advanced to him in terms of the sale agreement.

Whether such a defence, no matter how weak can succeed must await a trial unless it is on the face of it obviously unsustainable.

Summary discretionary remedy which this court has been called upon to exercise may only be excercised in the plain, obvious and closest cases. The lower court proceeding were not made available as the applicant had difficult in obtaining them. I have considered the application, the affidavit in support as well as the submissions by both the counsel for the applicant and the Learned State Counsel and it can't be said that this application is lacking in merit. When the applicant failed to appear in court for the mention of his case, which led to the cancellation of his bail, he had gone to see a doctor and he produced a medical card to support his claim.

I allow the application and order that his bail be reinstated on similar terms. I also order stay of proceeding in Criminal Case No. 406 of 1994 in Kerugoya Court until the application No. 46 of 1998 now pending before the High Court Nyeri is heard and determined.

Orders accordingly.

Dated and delivered in Nairobi this 16th day of June, 1998.

J.L.A. OSIEMO

JUDGE