



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: SHAH, J.A. (IN CHAMBERS)
CIVIL APPLICATION NO. NAI 223 OF 1997 (98/97UR)
BETWEEN
UNITED COREBOARD PRODUCTS LTD
KUNVARJI SHIVJI VARSHANI
SHAMJI SHIVJI VARSHANI
MARAN SHIVJI VARSHANI.....APPLICANTS
AND
BANK OF CREDIT AND COMMERCE
INTERNATIONAL (OVERSEAS) LTD.....RESPONDENT
(Application for stay of execution of the High Court decree
(Mwera J) dated 19th May, 1995
in
H.C.C.C. 4875 OF 1987)

RULING ON CERTIFICATE OF URGENCY

On 29th August, 1997, after I had studied the application dated 28th August, 1997 I declined to certify the application as urgent. The auction of the property in question was to take place on 30th August, 1997 and 29th August, 1997 was a Friday. There was no possibility of constituting a bench of three judges to sit before the time of auction.

The affidavit in support of the certificate of urgency simply refers to the advertised sale date and the necessity to save the property from being auctioned. There is no mention whatsoever of what happened previously.

H.C.C.C. NO. 4875 has had a chequered history which has been set out by Pall J (as he then was) in his

ruling which ruling is the subject matter of the intended appeal. I was not informed that there is in a parallel suit filed by the applicants in the superior court concerning the same suit property. Nor was I informed that the ruling of Mwera J dated 19th May, 1995 was subject of a struck out appeal. This ruling is referred to by Pall J at page 13 of the record. Nor was I informed that a bench of three Judges of this Court (Kwach, Tunoi & Shah, JJ.A.) had struck out Notice of Appeal dated 31st May, 1996. See Civil Application No. NAI 378 of 1996. Nor was I informed that another bench of three Judges of this Court (Gachuhi, Gicheru & Kwach, JJ.A.) had on 10th November, 1995, struck out Notice of Appeal filed on 10th May, 1995.

As all these applications refer to the same property and as does the parallel suit it was incumbent upon the applicants to fully set out, in good time, all facts even if those facts were not palatable to them. I would not certify the matter urgent in any event for lack of candour on the part of the applicants.

In any event, the property whose sale is sought to be restrained has been sold on 30th August, 1997 when there was no order for stay of execution of decree in H.C.C.C. NO. 4875 of 1987. I was informed from the bar without demur that terms of sale were settled by the Senior Deputy Registrar of the superior court (Mr. Bhatt) in the presence of the applicants. So they have been aware of the impending sale for a considerate time.

Mr. Nabutete was not at all aware of what had previously happened. I do not blame him. It would appear that his instructing advocate had not fully briefed him.

In view of what I have said I decline to grant a certificate of urgency.

Dated and delivered at Nairobi this 4th day of September, 1997.

A. B. SHAH

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JUDGE OF APPEAL