

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 468 OF 2017

LERNARD OLE SEME.....1ST PLAINTIFF

PETRO SARUNI OLE KOITAAT.....2ND PLAINTIFF

NTUKUSIOI OLE SAPAI.....3RD PLAINTIFF

-VERSUS-

EQUITY BANK (KENYA) LIMITED.....DEFENDANT

RULING

The Application before me is the Notice of Motion dated 30th May, 2017 and brought under order 40 Rule 1,2,3 Section 97 and 99 of the Land Act, Articles 10,19, 23, 27 and 47 of the constitution of Kenya 2010 and seeks for an order of injunction restraining the Defendant from exercising its statutory power of sale over and in respect of Land Parcel TRANS MARA/MOYOI/1159.1489 and 1690 and in particular, advertising, re advertising lesing and interfering with the Plaintiffs titles rights and interest in the suit land.

The Application was based on the grounds that since the Applicant is the right owner of the suit land but the said land was charged to the Defendant pursuant to a loan that was disbursed to the Plaintiff in which the maximum interest rate to be chargeable was to be 23.99% per annum. However, the defendant in contraction of the banking varied the said terms and hence the instant suit.

The Application was opposed by the Respondent by way of a Replying Affidavit.

I have read the application and the pleadings filed and I do find that the predominant cause of action in the matter is purely of commercial nature and pursuant to the decision of the supreme court in the case of **REPUBLIC -VERSUS- KARISA CHENGO & OTHERS(2017)EKLR** I find that I lack jurisdiction to hear and determine the application and the suit and I consequently order that the suit herein be transferred to Narok High Court for hearing and determination.

DATED, SIGNED and DELIVERED in open court at NAROK on this 23rd day of July, 2019.

Mohammed Kullow

Judge

23/7/19

In the presence of:-

Parties and advocates absent

CA:Chuma

Mohammed Kullow

Judge

23/7/19