



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 51 OF 2017

STELLAR KAVUTHA MUTHOKA1ST PLAINTIFF

KENNY MUTHOKA MALUKI2ND PLAINTIFF

VERSUS

KENYA WOMEN MICRO-FINANCE BANK LTD.....DEFENDANT

RULING

1. In the Notice of Motion dated 1st March, 2019, the Plaintiffs are seeking for the following orders:

a. That the Redemption Notice dated 15th February, 2019, Notification of Sale dated 8th February, 2019, and several other notices all dated 10th December, 2018 irregularly issued to the Plaintiffs/Applicants by the Defendant/Respondent be suspended.

b. That the officers of the Defendant/Respondent who authorized Auctioneers to issue irregular Notification of Sale and Redemption Notices be punished for flagrantly disobeying the orders of the Honourable Court issued on 11th May, 2018.

2. The Application is supported by the Affidavit of the 2nd Plaintiff who has deponed that the Defendant has issued him with irregular and illegal notices dated 10th December, 2018; that the said notices were copied to the tenants occupying parcel of land known as Kitui Municipality Block III/290 and Kitui Municipality Block 1/90 (*the suit properties*) and that the Defendant has also issued him with a forty five (45) days Redemption Notice and a Notification of Sale threatening to sell the suit properties by public auction on 7th May, 2019.

3. The 1st Plaintiff finally averred that on 11th May, 2018, the court delivered a Ruling wherein the Defendant was restrained from selling the suit properties pending the hearing and determination of the suit; that the Defendant has resorted to malicious, callous, unreasonable and capricious practices intended to cripple him economically and that the Defendant is poisoning the minds of tenants by telling them to vacate the suit premises while the matter is pending in court.

4. In response, the Defendant's Regional Manager deponed that after the Ruling of this court of 11th May, 2018, the Defendant relied on the concerns raised by the court and sought to rectify the same by issuing fresh notices in accordance with the law.

5. According to the Defendant's Regional Manager, the loan amount owed continues to accrue interest on a monthly basis and yet the Plaintiffs have not made any effort to settle the same since the temporary orders of injunction were given; that the Application has been filed in bad faith and as an afterthought and that the Defendant's statutory powers of sale has crystallized.

6. The Defendant's Regional Manager finally deponed that the Applicant neither served the Respondent personally nor his advocate with the Application dated 1st March, 2019; that the Respondent is apologetic and extremely remorseful for acting under the mistaken belief that what was ordered in the Ruling was solely based on the flawed procedure of non-issuance of notices and that the Respondent has taken steps to purge the contempt by complying with the court orders.

7. The Defendant's Manager finally deponed that the Defendant has since written to the Applicant's advocates recalling and cancelling the statutory notices until the suit has been heard and determined. Both the Plaintiffs' and the Defendant's advocates reiterated the contents of their clients' Affidavits.

8. It is not in dispute that on 11th May, 2018, this court delivered a Ruling in which it allowed the Plaintiffs' Application dated 16th February,

2017 in the following terms:

a. That this Honourable Court be pleased to grant a temporary injunction restraining the Respondent whether by itself, its servants and/or agents or whomsoever else is acting on its instructions, behalf and/or authority from selling by public auction and/or private treaty titles numbers Kitui Municipality/Block III/290 and Kitui Municipality/Block 1/90 or dealing with the same in any other manner whatsoever pending the final determination of the suit herein.

b. That the Respondent be condemned to pay costs of this Application.

9. The Ruling of 11th May, 2018 was delivered in the presence of the Plaintiffs' and the Defendant's advocate. Indeed, the Defendant's Regional Manager has not denied that he was aware of the Ruling of 11th May, 2018.

10. While aware of the Ruling of 11th May, 2018, the Defendant, through its agent, Bessy Mboru, authored a notice dated 10th December, 2018 addressed to the Plaintiffs. The said notice was copied to the Kitui County Commissioner and the tenants occupying the suit properties.

11. In the notice dated 10th December, 2018, the Defendant's representative gave to the Plaintiffs a notice of forty (40) days to pay KShs. 20,136,452.55. According to the said notice, the Defendant would proceed "to exercise its statutory remedy under Section 90(3) (e) of the Land Act No. 6 of 2012 and sell the charged land."

12. In addition to the statutory notices dated 10th December, 2018, the Defendant's agent also instructed Crater View Auctioneers who issued to the Plaintiffs with a forty five (45) days Redemption Notice dated 15th February, 2019. The said notice was duly served on the Plaintiffs on the same date and was copied to the Kitui County Commissioner.

13. In addition to the Redemption Notice of 15th February, 2019, the Defendant also instructed Crater View Auctioneers to issue a Notification of Sale. The said Notification of Sale provided that "Messrs. Crater View Auctioneers, and agent for and on behalf of the Creditor (the Defendant), shall sell the Public Auction the property(s) described herein below at Kitui." The date for the public auction of the suit land was indicated as Tuesday 7th May, 2019 at 12.00 noon outside KWFT offices, Kitui.

14. The purported statutory notices, the Redemption Notice and the Notification of Sale were issued either by the Defendant's agent. Indeed, the said notices were issued in contravention of the order of the court of 11th May, 2018 in which the court restrained the Defendant from selling the suit land either by way of public auction or private treaty.

15. The Defendant's Regional Manager has admitted that the Defendant was in contempt of the order of the court. According to the Regional Manager, the Defendant has taken steps to purge the contempt by complying with the court orders.

16. As was held in the case of *Commercial Bank of Africa Limited vs. Isaac Kamau Ndirangu (1992) eKLR*, it is only by acting swiftly and firmly when an order of the court is flouted that the dignity and authority of the court can be held.

17. It has been stated for the umpteenth time that it is imperative that orders of the court must be obeyed as a cardinal basis for endurance of judicial authority and dignity. To do otherwise would erode the dignity and authority of the courts (**See Commercial Bank of African Limited vs. Isaac Kamau Ndirangu, supra**). In that regard, having found the Defendant's representative to be in contempt of the orders of the court, I shall, which I am obliged to do, proceed to punish him after I have heard him in mitigation.

18. However, before imposing a sentence, the Defendant's Regional Manager shall be allowed by this court to mitigate on a date to be agreed upon. Consequently, the Application dated 1st March, 2019 is allowed in the following terms:

a. The Redemption Notice dated 15th February, 2019, Notification of Sale dated 8th February, 2019, and several other notices all dated 10th December, 2018 were irregularly issued to the Plaintiffs/Applicants by the Defendant/Respondent and are hereby suspended.

b. The Regional Manager (Central Eastern Region) of the Defendant be and is hereby found to have been in contempt of the orders of court of 11th May, 2018.

c. The Defendant to pay the costs of the Application.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4TH DAY OF OCTOBER, 2019.

O.A. ANGOTE

JUDGE