



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 300 OF 2015

FAMILY SHADE AFRICA LIMITED.....APPLICANT

=VERSUS=

JANE WANJIKU GITAU.....1ST RESPONDENT

THE LAND REGISTRAR, NAIROBI.....2ND RESPONDENT

B.K SILA T/A LEGACY AUCTIONEERING SERVICES..3RD RESPONDENT

RULING

1. The applicant , Family Shade Africa Limited filed a Notice of Motion dated **4th May 2017** in which it seeks the following reliefs:-

1. That this matter be certified as urgent

2. That the 1st Respondents and/or James Gitau Mukuria do deposit into court as a security the sum of Kshs. 8 Million paid by the Applicant to the 3rd Respondent at the public auction held on 28th day of May 2015.

3. That in the alternative to 1 above the 1st Respondent, her husband James Gitau Mukuria and their immediate family members ,relative, agents and/or servants do immediately vacate and hand over vacant possession of the suit premises being Dagoreti/Waithaka/846 to the Applicant pending the hearing and determination of the substantive suit being HCC ELC NO. 515 of 2015.

4. That the cost of this application and of the suit be awarded.

2. The applicant is seeking the above orders on ground that since it purchased the property at a public auction, it has never enjoyed the same. That it took a loan to purchase the property yet it cannot enjoy the same. It now requires the first respondent or her husband to deposit a sum of Ksh.8,000,000/= as security for costs.

3. The application is opposed by the first respondent based on a replying affidavit sworn on 19th September 2017. The first respondent contends that the applicant's application is misconceived and not supported by the law. That if the applicant wanted security for costs, it cannot ask the same in the sum

which is the value of the auctioned property.

4. I have considered the applicant's application as well as the opposition thereto by the first respondent. The applicant is seeking security for costs in this miscellaneous file. The application is expressed to be brought under Order 26 Rule 1 of the Civil Procedure Rules. In this miscellaneous application there is nothing which is pending to warrant an order for security for costs. The applicant's prayers for removal of a caution has been granted in a separate ruling. The applicant is seeking security for costs in the sum of Kshs.8, 000,000/=. Even if there was to be a suit pending in this matter, such costs could not have been in that region.

5. The applicant is seeking an alternative prayer for eviction pending the outcome of ELC 514 of 2015. It will not be appropriate to grant orders of eviction when there are pending proceedings in ELC 514 of 2015 touching on the subject matter which had been purchased by the applicant. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the first respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 29th day of January ,2018.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the time and date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE