



**IN THE REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC NO. 665 OF 2015**

**INTEGRITY CONSULTANTS MANAGERS LTD.....PLAINTIFF**

**=VERSUS=**

**RAFIKI DEPOSIT TAKING MICRO-FINANCE (K) LTD.....DEFENDANTS**

**RULING**

1. The Plaintiff /Applicant filed a Notice of Motion dated 7<sup>th</sup> July 2015 in which it sought the following orders:-

**1) Spent**

**2) The Honourable Court be pleased to certify this matter urgent to be heard ex-parte at the first instance or on priority basis.**

**i. GATUANYAGA NGOLIBA BLOCK 2/653**

**ii. GATUANYAGA NGOLIBA BLOCK 2/654**

**iii. GATUANYAGA NGOLIBA BLOCK 2/655**

***Until this application is heard and determined and thereafter until the suit is heard and determined.***

**3) The Honourable court be pleased to issue a court inhibitory order, inhibiting all dealings in land parcel numbers:-**

**i. GATUANYAGA NGOLIBA BLOCK 2/653**

**ii. GATUANYAGA NGOLIBA BLOCK 2/654**

**iii. GATUANYAGA NGOLIBA BLOCK 2/655**

***Until this application is heard and determined or until further court orders.***

**4). The costs of this application be provided for.**

2. The applicant was the registered owner of LR Nos. Gatuanyaga Ngoliba Block 2/653,654 and 655 (suit properties). In or around August 2013, John Waithaka Wamai and Julia Mwihaki Wanyoike who are directors of the applicant approached the respondent for an advance of a loan facility of Kshs.2,000,000/= . The Respondent offered to advance them the facility. The two accepted the offer on 2<sup>nd</sup> September 2013. It was a term of the offer that the loan was to be guaranteed by the plaintiff which was to offer the suit properties as security. A charge over the suit properties was created.

3. Through the application, the applicant contends that the respondent has threatened to sell the suit properties without following due process; that no notices were issued as required and that the applicant has on several occasions requested for a true statement of account from the respondent but that the respondent has not given the statement.

4. The respondent opposed the applicant's application through a replying affidavit sworn on 11<sup>th</sup> November 2015. The respondent contends that the applicant's application is an abuse of the process of the court. The applicant had guaranteed the loan which its directors had taken.

There was default in re-payment which resulted in the requisite statutory notices being issued.

5. The suit properties were valued and the same were sold in a public auction which was conducted on 10<sup>th</sup> June 2015 following press advertisement in the Daily Nation of 25<sup>th</sup> May 2015.

6. I have carefully considered the applicant's application as well as the opposition thereto by the respondent. I have now to decide whether the orders can be granted. The applicant moved to court on 10<sup>th</sup> July 2015. The applicant did not disclose the fact that an auction had already taken place the previous month. The applicant claimed in the affidavit that it had received a call from one Abraham Kiseru on 2<sup>nd</sup> July 2015 who informed them that they were going to sell the suit property. This of course cannot be true as the suit properties had already been sold at a public auction conducted on 10<sup>th</sup> June 2015.

7. The applicant pretended not to have been served with any statutory notice. Contrary to its claims, all the necessary notices were served. There was a valuation done and auction was conducted in public. The applicant's application had been overtaken by events as at the time it was filed. The suit properties have already been transferred and are registered in the name of a third party. This is according to the submissions filed by the respondents. It is therefore clear that the applicant's remedy does not lie on injunction. It lies in damages if the applicant will succeed to show at the hearing that the sale was unlawful. I therefore find that no order of injunction or inhibition can issue in the circumstances. I find no merit in the applicant's application which is hereby dismissed with costs to the respondent. As the suit properties are situate in Thika, I direct that this file be transferred to Thika Chief Magistrates' Court for hearing and disposal.

It is so ordered.

**Dated, Signed and Delivered at Nairobi this 5<sup>th</sup> day of April, 2018.**

**E.O .OBAGA**

**JUDGE**

In the presence of;-

Mr Gitonga for M/s Kageni for defendant

Court Assistant: Kevin

**E.O .OBAGA**

**JUDGE**