

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 12 OF 2017

BERNARD MWENDWA MUNYASYA.....1ST PLAINTIFF/APPLICANT

MARY WANJIRU MWENDWA.....2ND PLAINTIFF/APPLICANT

VERSUS

CFC STANBIC BANK LIMITED.....DEFENDANT/RESPONDENT

RULING

Bernard Mwendwa Munyasya and ***Mary Wanjiru Mwendwa*** have come to court by way of Notice of Motion in the application dated 17.1.2017 seeking a temporary order of injunction restraining the defendant by themselves, employees, agents or servants from advertising for sale, disposing of, auctioning, transferring and/or evicting the 2nd plaintiff from the suitland or in any other manner interfering with the 2nd plaintiff's peaceful occupation, possession or ownership of the suit property known as ***Eldoret Municipality/Block 21 (King'ong'o)/3253***, pending the hearing of the suit and that the entire process set in place by the defendant for sale by public auction of the 2nd defendant's property be declared irregular, unprocedural and illegal and the entire process of exercise of statutory right be set aside.

The application is based on grounds that the 1st plaintiff/applicant applied for a mortgage facility of upto the sum of Kshs.8,400,000 from the defendant/respondent to enable him finance the purchase of land title No. Eldoret Municipality/Block 11/225. The 2nd plaintiff/applicant guaranteed the 1st plaintiff/applicant and offered her title deed for the property known as Eldoret Municipality/Block 21(King'ong'o)/3253 as a security to enable the 1st plaintiff/applicant secure the said mortgage facility of Kshs.8,400,000. The defendant/respondent granted the 1st plaintiff/applicant the mortgage facility in the sum of Kshs. 8,400,000.

The term of re-payment was to the effect that the 1st plaintiff/applicant do pay Kshs. 215,000 monthly effective February, 2014 to the loan account with the defendant/respondent within a period of five (5) years until payment in full which term the 1st plaintiff/applicant agreed to abide with.

The 1st plaintiff/applicant has since then been servicing the loan account with an aggregate amount of Kshs. 215,000 to-date. The defendant/respondent has violated the mandatory requirement of the law under Section 96 of the Land Act. That the plaintiffs/applicants have not been issued the statutory notice as required by law under Section 90 of the Land Act (No. 3 of 2012). The actions by the defendant/respondent are illegal and a nullity and that the 1st plaintiff/applicant is ready and willing to continue servicing the outstanding loan as he has always done and the purported sale ought to be stopped.

According to the plaintiff, the outstanding loan balance of Kshs.6,000,000 or thereabouts is not commensurate with the security which stands at approximately Kshs.20,000,000 purported to be sold when there is no default.

That unless orders are granted, the 2nd plaintiff/applicant is likely to suffer irreparable loss as the property due for auction is her only source of livelihood and income and this shall further result in family disintegration and therefore it is in the interest of justice that this application be allowed in favour of the plaintiffs/applicants. That no prejudice will be suffered by either party should the orders sought issue. That this application has been brought timely and in good faith. That unless the orders sought herein are granted, the 2nd plaintiff stands to suffer irreparable loss that cannot be monetarily compensated.

The defendant's response is that he advanced the 1st plaintiff a banking facility of Kshs. 8,400,000. The 2nd plaintiff was the guarantor. The facility was to be repaid with interest in monthly installments. The plaintiff defaulted and the outstanding loan amount is Kshs.8,757,561.75 as at 14.9.2016. A formal demand was made but no money was paid. The first statutory notice was issued under section 90(1) and 2(b) of the Land Act, 2012, giving the plaintiffs 3 months' notice. The plaintiffs failed to rectify the default. The defendant issued notice under section 96(2) of the Land Act, 2012 giving the plaintiffs 40 days grace period to redeem the property. The defendant has complied with section 97(2) of the Land Act, 2012 by doing a valuation of the property. No money has been paid. The defendant has instructed Legacy Auctioneers to revert the loan through sale by public auction. A redemption notice has been issued. A notification of sale has been issued. No money has been paid by the plaintiffs. Currently, the defendant states that the plaintiffs have not fully settled the loan save for a few outgoings and the respondent does not intend to sell the subject property.

The plaintiffs filed a supplementary affidavit on 21.8.2017 and at paragraph 13, it is stated that there was nothing outstanding as the loan has been settled save for a few outgoings.

I have considered the application, supporting affidavit, replying affidavit and the supplementary affidavit and do find that the sale was suspended after the plaintiffs paid the outstanding amount, therefore, an order of injunction will be issued in vain. Courts do not act in vain. As stated by the respondent, the application has been overtaken by events. The upshot of the above is that the court is inclined to issue an order of status quo until the hearing and determination of the suit.

Dated and delivered at Eldoret this 28th day of June, 2018.

A. OMBWAYO

JUDGE