

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 798 OF 2012

DAVID LIMO BUNDOTICH.....PLAINTIFF

VERSUS

HOUSING FINANCE (K) COMPANY LIMITED.....DEFENDANT

RULING

The application before court is dated 22.7.2014. It seeks orders that the court order registered on 30.3.2012 against the land title number **Uasin Gishu/Kimumu/629** be deregistered and that costs be in the cause. The application is based on grounds that the injunction granted pending the issuance of a fresh and valid statutory notice followed a complaint notification of sale. The defendant has since complied with the order and issued a valid statutory notice and a notification of sale. That the defendant has already exercised his statutory power of sale and sold the land to a third party. The order is therefore spent.

The application is supported by the affidavit of Patrick Mwangi Wainaina. The Legal Manager, Housing Finance Company Limited (HFCK) who states that this court issued an injunction pending the issuance of a fresh and valid statutory notice followed with a complaint notification of sale. The defendant duly complied and issued a fresh statutory notice and served the same. The relevant notification of sale was also served. The defendant sold the land to one Kipkoech Ruto. Prior to the sale, there was advertisement in the Daily Newspaper. A land sale agreement was entered into, however, it transpired that the plaintiff had already registered the court order. According to the Land Registrar, the court order can only be deregistered by the court. The Land Registrar has declined to complete registration of the transfer unless the court order is deregistered.

The plaintiff filed a replying affidavit stating that the statutory notice that the defendant seeks to rely on is a nullity as it refers to a non-existent charge known as Housing Finance in contravention to section 107 and 109 of the Companies Act Cap 486, Laws of Kenya, which requires a body corporate's legal name to be indicated in such documents. That the statutory notice is a nullity as it does not have the corporate seal of the chargee. The mode of service is not explained. That the certificate of postage was showing who is not the chargee. The notification of sale is a nullity as it bears the creditors and not the chargee and does not name the property as required by Rule 15(b) of the Auctioneers Rules, 1997. The property was not valued. According to the respondent, the certificate of service does not indicate the charge but refers to a stranger. The defendant did not issue the 40 days' notice as required by section 96(2) and (3) of the Land Act, 2012.

I have considered the application and submissions raised and do find that on the 23.3.2012, the court issued an injunction against the sale of land parcel No. Uasin Gishu/Kimumu/629 pending issuance of a fresh and valid statutory notice followed with a complain notification of sale. The issue before me is whether the 2nd process of sale was lawfully done. The plaintiff argues that the fresh statutory refers to a non-existent charge known as Housing Finance. I have looked at the letterhead of the charge. It refers to Housing Finance, however, the body of the notice refers to Housing Finance Company of Kenya Ltd, the charge and the said notice was sent to Mr. David Limo Bundotich of P. O. Box 7552 – 30100, Eldoret. There is evidence that the letter (notice) was sent on 3.4.2012. I have looked at the certificate of postage and do find it to be proper.

The notification of sale identifies the defendant as the creditor, though the full name was not indicated, no prejudice was suffered by the plaintiff. The property owner is identified as the plaintiff and at the same time being the principal debtor. The amount claimed is clearly indicated plus the auctioneers' charges.

The property was valued at Kshs.6,460,000. Though the notification of sale does not describe the property, but it refers to the property of the plaintiff which it has charged for a loan that is unpaid amounting to Kshs.11,671,635.95 as at 31.7.2012 plus accrued interest at the rate of 18.25 per annum and 19.75 per annum on capital and arrears respectively until payment in full. The plaintiff has not demonstrated that he had another loan with the defendant where the suit land was charged as security. The failure to cite the particulars of the property does not prejudice the plaintiff. Moreover, the signing of the memorandum of sale by Margaret Wanjiru Kago does not in any way affect the rights of the plaintiff.

The upshot of the above is that the court finds in favour of the defendant and that the court order registered on 30.3.2012 by the Land Registrar in respect of Uasin Gishu/Kimumu/629 as Entry No. 5 is hereby deregistered. Orders accordingly.

Dated, signed and delivered at Eldoret this 26th day of July, 2018.

A. OMBWAYO

JUDGE