



**REPUBLIC OF KENYA.**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA.**

**ELC. NO. 160 OF 2016.**

**BOAZ LIGOODI SHIPIMIRU.....PLAINTIFF**

**VERSUS**

**STANDARD CHARTERED BANK (K) LTD..... DEFENDANT.**

**R U L I N G.**

1. The application under consideration is a Notice of Motion filed here on 9/9/2016 and dated 23/8/2016. It is brought under section 104 and 105 of the Land Act 2012 and Order 40 Rules 1 & 2 of Civil Procedure Rules, 2010. The plaintiff – **BOAZ LIKOODI SHIPIMIRU** – is trying to temporarily restrain sale of land parcel NO. ISUKHA/SHIRERE/2289 which the defendant – STANDARD CHARTERED BANK – has threatened to conduct following default in repayment of a loan advanced to the plaintiff. The land had been offered as security.

2. The plaintiff admits being in arrears and has stated that a notice of sale has been issued to him. He avers however that he will suffer irreparable loss and that other people depending on the property will be affected. He avers that he needs time to sell one of his properties in order to make some payment.

3. The application first came before me on 14/9/2016. I directed, inter alia, that service be done for hearing the application inter partes. At that time the prayers for consideration were (i) and (ii). Prayer (ii) was later granted on 27/9/2016 when the defendant's side conceded that it could be granted. On that date too, it was agreed that the application be canvassed by way of written submissions. The matter was then scheduled for mention on 29/11/2016 by which time both sides were supposed to have filed submissions.

4. The date of 29/11/2016 came and only the defendant had filed submissions. To date, the plaintiff's side has not filed submissions. The prayers for consideration at this stage are as follows:

Prayer (iii) That the court be pleased to issue an injunction barring the defendant, its agents and employees from putting up land parcel NO. ISUKHA/SHIRERE/2289 for sale till this case is heard and determined.

Prayer (iv) Costs of the application be provided.

Prayer (v) Any other order deemed fit and just.

5. The defendant filed grounds of opposition on 27/9/2016. The application was termed premature as the notice issued to the plaintiff was dated 26/7/2016 and gave him a period of three (3) months to pay the amount owing. It was also pointed out that the plaintiff had admitted indebtedness but had failed to pay. The defendant stated that the application had no merit.

6. The defendants submissions were filed on 29/11/2016. It was submitted that the threshold set in the case of **GILELA VS CASSMAN BROWN & CO. LTD: [1973] EA 358** has not been met. The threshold is for consideration in deciding whether to grant interlocutory injunction. It entails establishing a prima facie case with probability of success; showing a likelihood that irreparable loss not compensable in damages might occur; and, in case of doubt, opting for consideration of balance of convenience.

7. The plaintiff is said to have acknowledged the debt owed. He admitted also receiving the relevant notices. The defendant is said to have complied with all procedures. With all this in mind, it was submitted that a prima facie case is not shown.

8. The decided case of **FRANCIS J.K. ICHATHA VS HOUSING FINANCE COMPANY OF KENYA: CIVIL APPLICATION NO.108/2005** was availed to make the point, inter alia, that the court should not protect the plaintiff from the consequences of his own default or give him advantage by virtue of his refusal or failure to make repayment as required.

9. It was submitted too that the plaintiff has not shown that he will suffer harm that cannot be compensated in damages. It was submitted that it is not enough for the plaintiff to allege that his property is of sentimental value or that he has his matrimonial home on it. Charging it, the defendant submitted, equated the property to a commodity for sale. The case of **ANDREW MURIUKI WANJOHI VS EQUITY BUILDING SOCIETY & 2 Others [2006] eKLR** was availed to drive this point home.

10. The balance of convenience was also said to tilt in favour of the defendant. The plaintiff was said not to be making any payments and the money owing continues to increase. It was feared that the debt may outstrip the value of the charged property.

11. A look at what is on record shows clearly that the plaintiff has defaulted in payment. He is said to continue in such default and the money he owes continues to increase. And a look at the plaintiff's case does not show it as one with reasonable prospects of success. He is merely asking to be given time to pay and while so asking, he is not making any real commitment to pay the whole debt. He talks of selling property to raise money yet nothing is shown to show such property exists.

12. The plaintiff's position is made worse by the fact that he has not filed submissions to counter what the defendant has stated. As things stand, the defendant has the upper hand. It has demonstrated well that the plaintiff does not deserve the orders he is seeking. It is for these reasons that I make a finding that the plaintiff's application has no merit. I hereby dismiss the application with costs.

**A. K. KANIARU,**

**JUDGE.**

**DATED AND DELIVERED ON 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**IN THE PRESENCE OF;.....**

**PLAINTIFF.....**

**DEFENDANT.....**

**JUDGE.**