



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 183 OF 2017

FORMERLY MERU ELC CASE NO.101 OF 2013

JOHN MICHENI NGATUNI.....1ST PLAINTIFF

NICHOLAS MWIRU NGATUNI.....2ND PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD..... DEFENDANT

RULING

1. This application is dated 11th April, 2013 and seeks orders that:

1. This application be certified urgent for hearing ex-parte in the first instance.

2. There do issue an ex-parte order for stay of sale of land parcel Nos. MAGUMONI/MWONGE/1125, 1126, 1148 and 1149 pending the hearing of this application inter-partes or until further orders by this court.

3. The sale of land parcel Nos. MAGUMONI/MWONGE/1125, 1126, 1148 and 1149 be stayed pending the hearing and determination of this suit or until further orders by the court.

4. There do issue an order of temporary injunction restraining the defendant and/or its agent from selling land parcel Nos. MAGUMONI/MWONGE/1125, 1126, 1148 and 1149 pending the hearing and determination of this suit or until further orders by the court.

5. The defendant be ordered to serve the plaintiffs with a statement of account reflecting the correct interest payable in respect of charges registered against land parcel Nos. MAGUMONI/MWONGE/1125, 1126, 1148 and 1149 grant the plaintiffs time to repay the correct amount payable.

6. This court do grant such further reliefs as may be appropriate.

2. The application is supported by the affidavit of John Micheni Ngatuni and has the following grounds:

1. The defendant has failed to issue the plaintiffs with the requisite statutory notice.

2. The defendant has loaded incorrect interest on the principal sum.

3. The plaintiffs will be greatly prejudiced if the said land is sold.

3. The parties have filed written submissions.

4. In their written submissions, the parties have taken diametrically opposed positions. Many of the issue raised in the submissions can only be determined after the parties' respective propositions have been canvassed in the main suit.

5. This suit was filed 4 years ago and ought to be heard and determined.

6. In business, time is of the essence.

7. In the interest of justice and to facilitate the expeditious hearing and determination of this suit, I find it necessary to allow the applications in terms of prayers 3 and 4. As contractual obligations cannot be foisted on parties, prayer 5 is allowed only to the extent that the defendant is ordered to serve the plaintiffs with a statement of account reflecting the correct interest payable in respect of the apposite charges.

8. Costs shall be in the cause.

9. The plaintiffs are ordered to fully comply with order 11 of the Civil Procedure Rules within 30 days of this ruling.

10. The defendant is ordered to fully comply with order 11 of the Civil Procedure Rules within 30 days after receipt of the plaintiffs' compliance documents.

11. Parties are directed to come to court for pre-trial conferencing and for directions on **17th July, 2017.**

12. It is so ordered.

Delivered in open court at Chuka this 11th day of April, 2017 in the presence of:

CA: Ndegwa

Nyamu Nyaga h/b Ringera for the plaintiff

P.M. NJOROGE

JUDGE