



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 34 OF 2017

GEORGE MUGAMBI GITUMA.....PLAINTIFF/APPLICANT

VERSUS

ECOBANK KENYA LIMITED.....DEFENDANT/RESPONDENT

R U L I N G

1. The Notice of Motion dated 24th January, 2017 seeks the following orders.

(1) Spent.

(2) That this Honourable Court be pleased to issue a temporary injunction restraining the defendant, its agents, servants employees, successors and/or assigns from selling, alienating, disposing, transferring and/or interfering with land Parcel NYAKI/KITHOKA/4507 pending the hearing and determination of this application interparties and/or until further orders of this Honourable Court.

(3) That this Honourable Court be pleased to issue a temporary injunction restraining the defendant, its agents, servants, employees, successors and/or assigns from selling, alienating, disposing, transferring and/or interfering with land parcel NYAKI/KITHOKA/4507 pending the hearing and determination of this suit.

(4) That this Honourable Court be pleased to stay the intended sale of land parcel NYAKI/KITHOKA/4507 by public auction and/or private treaty scheduled for 27th January, 2017 as advertised in the Daily Nation pending the hearing and determination of this application interparties and/or until further orders of this Honourable Court.

(5) That this Honourable Court be pleased to stay the intended sale of land parcel NYAKI/KITHOKA/4507 by public auction and/or private treaty scheduled for 27th January, 2017 as advertised in the Daily Nation pending the hearing and determination of the main suit.

(6) That this Honourable Court be pleased to issue such further orders to meet ends of justice.

(7) That the orders herein be served upon valley Auctioneers for and legal service manager recovery Ecobank Kenya Ltd for compliance.

(8) That cost of this application be provided for.

2. The Application is based on the grounds:

(a) That the defendant has instructed valley Auctioneer to sell the applicant land parcel No.

NYAKI/KITHOKA/4507 on 27/1/2017 by public auction.

(b) That the intended sale is irregular, illegal, premature and in breach of the loan contract terms entered into between the applicant and the respondent.

(c) That the applicant is not in breach and/or default of the loan agreement as the facility advanced is being serviced and/or repaid.

(d) That the defendant had failed to comply with the mandatory rules of disclosure to justify why they are intending to sell the applicant land parcel by availing all the relevant documents. Banks statements, loan statements to enable accounts be taken.

(e) That the defendant /respondent has breached the mandatory provisions of sec. 90 96 and 97 (2) of land Act No. 6 of 2012

(f) That if the intended sale is not stopped and stay orders sought granted the applicant will lose his parcel of land occasioning him irreparable loss and damage.

3. George Mugambi Gituma , the Applicant avers that he has been servicing the loan as required, and therefore his property should not be sold.

4. The application was filed under a certificate of urgency whereby on 25/1/17, the court granted exparte orders in terms of prayer 2, 4, and 7. There after the matter came before me on 8/2/17 when counsel for the applicant requested for time to respond to the replying affidavit of the Respondent.

5. The directions given by the court on 8/2/2017 are as follow:-

(1) Applicant is allowed to put in a further affidavit, strictly to respond to the Replying affidavit of the Respondent and the same is to be filed and served within 21 days.

(2) Interim orders extended until the next court day.

(3) Application to be dealt with by way of written submissions.

(4) Applicant to file and serve their submissions and authorities by 15/3/17.

(5) Respondent to file and serve their submissions by 27/3/17.

(5) Mention for submissions and to give a ruling date on 3/4/17.

6. When the matter came up on 3/4/17, applicant had neither filed the further affidavit nor submissions. No plausible explanation was offered as to why the applicant had not complied with the courts orders of 8/2/17. On the other hand the Respondent had duly filed their submissions.

7. Article 159 2 (b) of the constitution stipulates that “**justice shall not be delayed**” Further ,the civil procedure act section 1A and 1B mandates the court to exercise judicial authority in a manner that ensures there is expeditious disposal of cases. Section 1A (3) stipulates that;

“a party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the act, and to that effect, to participate in the processes of the court and to comply with the directions and orders of the court”

8. Having brought forth the application of 25/1/2017 under a certificate of urgency, the applicant was duty bound to adhere to Court's directions. More so, Applicant was required to be vigilant in prosecuting the said application. Instead, Applicant has displayed a lack lustre attitude towards the matter.

9. On the other hand, the Respondent did file a very detailed Replying Affidavit through its Re-medial Management Officer, one Elizabeth Hinga, filed on 08:02:17. It captures the particulars of the contract between the parties, the occurrence of default and the issuance of various notices. In essence, Respondent avers that the application is unmerited.

10. Respondent has also filed Submissions indicating that the application ought to be dismissed as it doesn't meet the threshold of granting a temporary injunction.

11. Applicant was supposed to advance persuasive arguments via Submissions in order to succeed in his prayers. He never filed any such submissions. Further, the averments made by the Respondent particularly in the Replying Affidavit of Elizabeth Hinga clearly indicate that applicant was in default of the loan payments and that the requisite notices were served.

12. I therefore find that the application of 25:01:17 has no merits and the same is dismissed with costs to Respondent.

DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF MAY, 2017 IN THE PRESENCE OF:

C:A Janet

Gitonga h/b for Muthamia for Plaintiff

Kiogora Arithi h/b for Muriuki for defendant present

HON. L. N. MBUGUA

JUDGE