

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 182 OF 2016

JOHN MBUGUA KARIRI1ST PLAINTIFF

EMILY WANGARI NGUGI.....2ND PLAINTIFF

VERSUS

KENYA REINSURANCE CORPORATION LIMITED.....1ST DEFENDANT

GALAXY AUCTIONEERS.....2ND DEFENDANT

RULING

What is before me is the Plaintiffs' application dated 5th July 2016 seeking a temporary injunction to restrain the Defendants from selling all that parcel of land known as L.R No. Kajiado/Kaputie North/24693 (hereinafter referred to as "the suit property") pending the hearing and determination of this suit. The application which was supported by the affidavit of the 1st Plaintiff was brought on the grounds that the Plaintiffs had charged the suit property to the 1st Defendant to secure a loan of Kshs.6,000,000/= which was advanced to them for working capital and that the 1st Defendant had instructed the 2nd Defendant to put up the said property for sale without serving them with the requisite statutory notices under the Land Act, 2012 and without valuing the property. The Plaintiffs contended that the Defendant's Statutory Power of Sale had not arisen. The Plaintiffs contended further that the Defendants had put up the suit property for sale without carrying out a valuation to determine its market value.

The application was opposed by the 1st Defendant through a replying affidavit sworn by its General Manager-Finance and Investments, Jaqueline Njui on 7th September 2016. In its replying affidavit, the 1st Defendant accused the Plaintiff of lying to the court and concealing material facts. The 1st defendant stated that the Plaintiffs were served with all the notices required under the law and that the Plaintiffs had acknowledged receipt of the same. The 1st Defendant stated further that it carried out a forced sale valuation of the suit property before the same was put up for sale. The 1st Defendant exhibited the notices which were served upon the Plaintiff and correspondence from the Plaintiffs in which they acknowledged receipt of the same and promised to clear the debt they owed to the 1st Defendant. One of the notices which were served upon the Plaintiffs by the 1st Defendant and receipt of which was acknowledged by the Plaintiffs was the statutory notice dated 10th June 2015. The Plaintiffs acknowledged receipt of this notice through an e-mail dated 29th June 2015 by the 1st Plaintiff to the 1st Defendant's advocates on record. In the e-mail, the Plaintiffs promised to clear the arrears then outstanding in their loan account by 31st July 2015 and the entire loan amount by 30th September 2015. The 1st Defendant also exhibited a copy of the valuation report in respect of the valuation which was carried out in the year 2015 before the suit property was put up for sale.

The Plaintiffs sought leave to file a supplementary affidavit in response to the replying affidavit by the 1st Defendant which leave was duly granted. The Plaintiffs did not file the said affidavit. The effect of that failure is that, what is stated in the 1st Defendant's replying affidavit regarding service of the statutory notices and valuation of the suit property before the same was put up for sale are uncontroverted. The 1st Defendant having demonstrated that the Plaintiffs were served with the notices required under the law and that the suit property was valued before the same was advertised for sale, it is my finding that no case has

been disclosed against the Defendants. The Plaintiffs have therefore failed to meet the first condition for granting a temporary injunction. In view of that finding, it is not necessary for me to consider the other conditions for granting a temporary injunction which were enunciated in the case of Giella vs. Cassman Brown & Co. Ltd (1973) E. A 358. The Plaintiff's application must fail.

In conclusion I find no merit in the Notice of Motion dated 5th July 2016. The same is dismissed with costs to the 1st Defendant.

Delivered and Signed at Nairobi this 27th day of June, 2017

S. OKONG'O

JUDGE

In the presence of:

N/A for 1st Plaintiff

N/A for 2nd Plaintiff

N/A for the 1st Defendant

N/A for the 2nd Defendant

Kajuju Court Assistant