



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA

ELC CASE NO. 80 OF 2017

NICHOLUS KINYUA MBUI.....PLAINTIFF

VERSUS

KEYSIAN AUCTIONEERS.....1ST DEFENDANT/RESPONDENT

BARCLAYS BANK OF KENYA LTD.....2ND DEFENDANT/RESPONDENT

RULING

This is in respect to the Plaintiff's Notice of Motion dated 18th May 2017 brought under **Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules** and **Sections 1, 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act**. It seeks the following orders:

1. *Spent.*

2. *Spent.,*

3. *That the Honourable Court be pleased to issue orders of temporary injunction restraining the defendants by themselves, their agents, servants, employees or anybody acting on their behalf from selling, dealing, interfering, alienating or disposing of all that parcel of land known as MUTIRA/KAGUYU/1887 pending the hearing and determination of this suit.*

The application is based on the grounds set out therein and supported by the affidavit of **NICHOLUS KINYUA MBUI** the plaintiff herein.

The gist of the application is that whereas the plaintiff took a loan of Ksh. 5,500,000 secured by the property MUTIRA/KAGUYU/1887 (the suit property) and has been servicing the same, the defendants wish to sell the said property yet no proper notice was issued. Further, that the National Irrigation Board has made an undertaking to pay the 2nd defendant all money owed to it hence this application.

Though served with the application, summons to enter appearance and plaint on 23rd May 2017, none of the two defendants filed any reply hereto although the firm of **MURIU MUNGAI & CO. ADVOCATES** entered appearance on their behalf on 7th June 2017.

When the application came up for inter-parte hearing on 15th June 2017, **MS THUNGU** advocate holding brief for counsel for the defendant sought three days to file a replying affidavit. That application was objected to by **MR. ABUBAKAR** advocate for the plaintiff who informed the Court that the

defendants had sufficient time.

The application was indeed served in good time and the defendants had sufficient time to file their responses thereto yet by 15th June 2017, some three weeks later, no replying affidavit nor grounds of opposition had been filed by the defendants. No explanation has been given as to why the defendants have not done so and I therefore do not have any material on which I can exercise my discretion to grant the defendants more time to respond to the application which was filed under certificate of urgency.

In the circumstances therefore, the plaintiff's Notice of Motion dated 18th May 2017 is not opposed. It is allowed in terms of prayer 3 thereof.

Costs shall be in the cause.

The parties are hereby directed to comply with all pre-trial directions so that this suit can be heard and determined within the next 12 months.

B. N. OLAO

JUDGE

16TH JUNE, 2017

Ruling delivered, dated and signed in open Court this 16th day of June 2017

Ms Kiragu for Plaintiff present

Ms Njiru for Mr. Muriu Mungai for Defendants present.

B.N. OLAO

JUDGE

16TH JUNE, 2017