



IN THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 2355 OF 2007

VERONICA THONI KIHANGU.....PLAINTIFF

=VERSUS=

KIAMBU UNITY FINANCE CO-OPERATIVE UNION LTD.....DEFENDANT

RULING

BACKGROUND

1. The Plaintiff/Applicant used to be an employee of the Defendant/Respondent but her services were terminated. The respondent had advanced the applicant a loan of Kshs.1,100,000/= over which the applicant offered her property known as LR No.Limuru Town/241(suit property) The applicant defaulted in repayment of the loan forcing the respondent to start the process of realizing the security. The applicant then moved to court where she filed the present suit in which she sought a declaration that the statutory notice issued by the respondent was illegal null and void. She also sought for a permanent and perpetual injunction restraining the respondent from interfering with the suit property.

2. A consent was later recorded in court in which the applicant was to pay the outstanding loan of Kshs.1,048,759.45 with interest at 12% by monthly instalments of 24,768.90 with effect from 30th November 2009 until settlement in full. The respondent was at liberty to realize the security in case of any default. The applicant did not fully comply with the consent prompting the respondent to advertise the suit property for auction.

APPLICANT'S APPLICATION

3. The applicant filed a notice of motion dated 28th March 2017 in which she seeks the following orders:-

1) Spent

2) Spent

3) Spent

4) That there be a mandatory order requiring the defendant/ respondent by itself, its agents, employees and/or servants to unconditionally surrender to the plaintiff/applicant a duly executed discharge of charge ,original title and any other necessary documents that will be required to facilitate the registration of a discharge of charge over the suit property (LR No. Limuru

Township/241).

5) Spent

6) That the costs of this application be provided for.

7) That the Honourable Court be at liberty to issue such other orders as it may deem just to grant in the circumstances.

4. The applicant contends that she has repaid all the amount as per the consent and that there is a credit being an overpayment.

RESPONDENT'S CONTENTION

5. The respondent has opposed the applicant's application based on a replying affidavit sworn on 24th April 2017. The respondent contends that the applicant is in breach of the consent recorded in court on 14th October 2009. That after the applicant made a payment of Ksh.700373, the respondent realized all suspended interest and penalties accrued for the whole period amounting to Kshs.404,437 .41 which amount was debited to her loan account. That the applicant is in arrears of Kshs.760.775.61

ANALYSIS

6. I have carefully examined the applicant's application as well as the opposition to the same by the respondent. I must say at the outset that the applicant's application was made in ignorance of the facts as they are. This is perhaps because her present lawyer was not the one who was acting for her when the consent was recorded. His former lawyer appears to have not fully informed her of the entire consent. This is clear from her previous lawyer's letter of 14th October 2009 which did not capture the issue of interest which was part of the consent. However, be that as it may, it was the duty of the applicant's present lawyer to peruse the file to see what was recorded.

7. There was an attempt to negotiate this matter out of court but those negotiations seem not to have borne any fruits. It is true that the applicant has fully repaid the principal sum but has not paid interest. The consent recorded on 14th October 2009 was clear that the principal sum together with interest of 12% was to be repaid in equal monthly instalments of 24,768.90. The interest element is still pending.

CONCLUSION

8. The consent recorded on 14th October 2009 compromised the suit. The applicant's application is seeking a mandatory injunction against the respondent ordering it to release her title and discharge the suit property. This is not possible as there is interest to be paid. I therefore find that the applicant's application is misconceived .The same is hereby dismissed with costs. The interim orders of injunction which had been given are hereby discharged.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **20th day** of **December 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE