



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

ELC NO. 292 OF 2014

MICHAEL KIMUTAI RONO.....1ST PLAINTIFF

ANNE JEROTICH RONO.....2ND PLAINTIFF

ROSE CHEPCHIRCHIR RONO.....3RD PLAINTIFF

AND

CONSOLIDATED BANK OF KENYA LTD.....DEFENDANT

AND

JOHN KIGEN.....1ST INTERESTED PARTY

KIPLAGAT CHEBII.....2ND INTERESTED PARTY

IRENE CHEBENI.....3RD INTERESTED PARTY

RULING

On the 2.7.2015, the hearing of this matter proceeded partially when the PW2, an accountant was called to testify. He gave evidence in chief and was cross examined by Mr. Odhiambo Advocate for the defendants.

On the 30.9.2015, when PW2 appeared for further cross examination, M/s Koech for the Interested Party objected to his evidence and applied for the said evidence to be expunged from record as to issues addressed by the PW2, were determined by the court.

Mr. Odhiambo agreed with M/s Koech on the basis that the only issue before court is whether the sale conducted on 14.7.2014 was valid and precisely whether the notices were valid.

Mr. Kigamwa argues that in order to determine a valid sale, we need to determine whether the chargee had a right to sell the property which arises from the statutory power of sale which goes hand in hand with the chargor's right of redemption. The plaintiff's position is that his indebtedness has been extinguished. To prove that he is not indebted, he needs to call a financial expert.

I have considered the submissions of all counsels on record and do find that by ruling dated 27.11.2016, the court found issues for determination as:

- 1. Whether there was an advertisement of the properties as contemplated by the law.**
- 2. Whether there was actually a sale by public auction.**

3. *Whether a Memorandum of Sale was executed and if so where and when such memorandum of sale was executed.*
4. *Whether there is any defect in the Memorandum of Sale, and if any, the effect of such defects.*
5. *Whether the purchasers made a deposit of 25% of the purchase price at the time of the sale.*
6. *Whether the sale of the properties should be upheld.*
7. *When the right of redemption is extinguished.*
8. *Whether in the circumstances of this case, the right of redemption was extinguished.*

None of the issues require the evidence of a financial expert and therefore, I agree with the submission of M/s Koech that the evidence of PW2 should be struck out for being irrelevant and the same is hereby struck out with costs in the cause.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF FEBRUARY, 2016.

ANTONY OMBWAYO

JUDGE