



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

CIVIL CASE NO 97 OF 2015

STEPHEN MUTHAURAPLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LIMITED.....DEFENDANT

R U L I N G

This application is dated 19th October, 2015 and seeks orders:-

1. THAT this application be certified urgent and be heard ex-parte in the first instance.

2. THAT the Honourable Court be pleased to issue an order of temporary injunction restraining the defendant whether by itself or its auctioneers, auctioneers agents or its servants or anyone else acting at its behest from selling, selling by auction and/or alienating parcel No. NYAKI/KITHOKA/2597 or in any other way dealing with the same pending inter partes hearing of this application.

3. THAT Honourable Court be pleased to issue an order of temporary injunction restraining the defendant whether by itself or its auctioneers, auctioneer's agents or its servants or anyone else acting at its behest from selling, selling by auction and/or alienating parcel no. NYAKI/KITHOKA/2597 or in any other way dealing with the same pending the hearing and determination of this suit.

4. THAT the costs of this application be provided for:

The application is buttressed by the affidavit of the Plaintiff, Stephen Muthaura and, *inter alia*, has the following grounds:-

- a. The Plaintiff is the registered proprietor of parcel NO. NYAKI/KITHOKA/2597 and had charged the same as security for the issuance of a financial facility by the defendant.**
- b. The plaintiff has complied with repayment terms of the facility and was quite surprised when the defendant issued a Public Auction notice and a statutory notice and also failed to serve the same upon the Plaintiff.**
- c. The defendant is intent on selling the above cited property without affording the Plaintiff his equitable right of redemption.**
- d. The defendant's home and further extensive developments lie on the said property.**

The Supporting Affidavit sworn on 19/10/2015 states as follows: -

1. THAT I am the Plaintiff/Applicant herein fully versed with the facts that give rise to this application thereby competent to swear this affidavit.

2. THAT in the year 2013, I obtained from the defendant, a financial facility of Kenya Shillings Seventeen Million, Six Hundred Thousand only (Kshs. 17,600,000) repayable within 10 years.

3. THAT acting as security for the fore cited facility. I charged my land parcel No. NYAKI/KITHOKA/2597 and from then on, I continued to repay the sums pursuant to the terms of the facility.

4. THAT sometimes on or about 16th October 2015, I was at, my home when I was served with a Public Auction Notice by LEGACY AUCTIONEERING SERVICES indicating that my land would be subject to sale on 3rd November, 2015. Annexed herewith and marked "SM1" is a copy of the said notice.

5. THAT upon conducting swift investigations, I was shocked and astounded to be informed that my loan account was in arrears and that a statutory notice to sell my fore cited land had thereby been served upon me via P.O Box 257-60200, Meru . Annexed herewith and marked "SM2" is a copy of the said statutory notice.

6. THAT not only was I shocked due to the above information, the said postal address of P.O Box 257-60200, Meru is alien to me because my correct address is P.O Box 444-60200 Meru and I have never been served with any statutory notices to enable me redeem my property if at all I have been in arrears.

7. THAT upon verbal inquiry from the defendant at the fore cited branch. I was informed that my property would be up for sale considering that other notices had been issued through the above postal address.

8. THAT I am greatly apprehensive that my property will be the subject of sale by the defendant without notice having been issued to me.

9. THAT my home lies on the suit land and I have greatly developed the same by building a double storey five bed-roomed residential permanent house and 4 servant quarters.

10. THAT the figures given as the outstanding loan balance are grossly exaggerated, inflated and do not reflect the true account and I shall pray for accounts.

11. THAT I stand to be rendered destitute due to the defendant' actions.

12. THAT the defendant has never sent me any demand notice prior to exercising the statutory power of sale, therefore the notice to sell my property is not only malafides but also malicious.

13. THAT it is therefore in the interest of justice that the orders sought herein are granted.

14. THAT what is deponed herein above is true to the best of my knowledge and belief.

Today's date for interpartes hearing was fixed in Court on 01/03/2016 when all parties were represented. In the absence of the defendant or his Advocate, I deem it that the application is not opposed. In the circumstances it is allowed with the effect that prayer 3 thereof is confirmed.

Costs shall be in the cause.

It is so ordered .

*Delivered in open Court at Meru this **13th day of April, 2016** in the presence of:-*

CC: Daniel/Lilian

Edwin Kimathi for the Plaintiff

P.M NJOROGE

JUDGE