



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC OF 227 OF 2016

NJORO SAFARIS & RHINO HOTEL LIMITED.....PLAINTIFF

VERSUS

RAFIKI MICROFINANCE BANK LIMITED.....1ST DEFENDANT

IGARE AUCTIONEERS2ND DEFENDANT

RULING

(Application for injunction to stop an intended sale by chargee; argument that no notices issued; to the contrary evidence of all required notices displayed; no reason to stop the bank from proceeding as intended; application dismissed)

1. This case was commenced by way of plaint filed on 27 June 2016. In the plaint, it is pleaded that the plaintiff secured some loan facility with the defendant, which was secured by a charge dated 19 January 2016 over the property Njoro Township Block 1/1274 (hereinafter the suit property). The plaintiff has pleaded that she has been making regular payments on 15 day of every month until sometimes in May 2016 when she experienced financial constraints. It is pleaded that the plaintiff sought some extension of time from the defendant for repayment of the loan but the bank (1st defendant) flatly refused. He has pleaded that he has never received any demand for the unpaid instalment. It is averred that on 20 June 2016, the bank instructed an auctioneer (the 2nd defendant) to call for the entire sum of Kshs. 15, 695,531/=. It is contended that this demand is a clog on the right of redemption of the plaintiff. It is also argued that there has been no current valuation of the property done and that the intended sale may be at a throw away price. In the suit the plaintiff wants the defendants permanently restrained from offering for sale the suit property; a declaration that the proclamation of attachment notice of 20 June 2016 is null and void; and costs of this case.

2. Together with the suit, the plaintiff filed an application for injunction, seeking to stop the defendants from selling the suit property pending hearing of this case. It is that application which is the subject of this ruling.

3. The 1st defendant has opposed the application through the replying affidavit of George Wainaina Mbutia, its Debt Recovery Manager. He has inter alia deposed that the applicant has been defaulting on the loan and a demand letter dated 26 April 2016 was issued. Another demand letter was issued on 15 June 2016 by the bank's lawyers. It is also said that a notice was also issued on 30 June 2016. All these letters and notices are annexed. It is also deposed that the plaintiff has issued cheques which have all bounced.

4. Mr. Otieno for the plaintiff and Ms. Wanjohi for the bank, both relied on the affidavits on record. I have considered these in arriving at my decision.

5. The main complaint of the plaintiff is that she has not been issued with the requisite notices and that the property may be sold at an undervalue because of want of a current valuation. I have looked at the correspondences and notices herein. I have seen the letter of 26 April 2016, from the bank, advising that the loan is in arrears to the tune of Kshs. 324, 940.21/=. Because of the default, the bank issued a demand calling for the entire loan which by then stood at Kshs. 15, 071,792.00/=. The same to be paid within 7 days. On 15 June 2016 another letter was written, this time by the advocates of the bank, demanding full payment of the sum of Kshs. 15, 365,504.50/= , then due, within 7 days or else appropriate steps to realize the security will be taken. On 30 June 2016, a three month notice was issued, and I believe that this is the statutory notice, for it is issued under Section 90 of the Land Act, 2012. As stated at the beginning of this ruling, this case was commenced on 27 June 2016, before the statutory notice of 30 June 2016 was issued.

6. I have not seen anything wrong with what the defendant bank has done. There has been default and demands made to the plaintiff to regularize her account. The plaintiff did not regularize the account despite the demands to do so. There was therefore nothing to hold back the bank from issuing the 3 month statutory notice. I observe that the notice has now expired. In the event that the plaintiff has not regularized her account, there is no bar to the bank proceeding to realize the security so long as all other requisite notices are made. I think it is premature to consider the issue of valuation, since the property has yet to be formally put up for sale and I am unable to conclude from the material before me that the bank is not keen on undertaking a valuation exercise. I have really not seen any reason to stop the bank from proceeding with its intentions to sell the property. To me, the bank appears to have done everything above board.

7. I am not convinced that she has displayed before me a *prima facie* case with any probability of success. I find no merit in this application and it is hereby dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 18th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr Biko holding brief for Mr Otieno for applicant

No appearance on part of M/s S. I Mwaura & Co for respondents

Court assistant: Janet

MUNYAO SILA

JUDGE

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