



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC NO. 867 OF 2015**

**HELLEN JANE ACHIENG' ODEGI..... PLAINTIFF/APPLICANT**

**=VERSUS=**

**KENYA COMMERCIAL BANK.....DEFENDANT/RESPONDENT**

**FURTHER RULING**

The Court on **23<sup>rd</sup> May 2016**, directed the parties herein to undertake a joint valuation of the suit property. The Court had declined to confirm the interim orders that were entered on **15<sup>th</sup> September 2015**, but issued status quo order until the joint valuation was to be done and report filed in Court.

The same was done on **26<sup>th</sup> July 2016**, and a Valuation Report was filed in Court on **10<sup>th</sup> August 2016**. The Court has now considered the said valuation report.

The market value was given at **Kshs.16,000,000/=** and forced sale value was given as **Kshs.12,000,000/=** . The court has also considered the Notification of Sale issued on **6<sup>th</sup> July 2015**, and the open market value was given **Ksh.15,000,000/=** and forced value at **Kshs.12,000,000/=** . That was almost one year before the joint valuation was carried out.

The Court finds that the value given by the Defendant on **6<sup>th</sup> July 2015**, was not an undervalued amount at that time and therefore the Defendant's Notification was within the market value and forced value of the suit property.

The Court has also taken into account that the Plaintiff did take a loan from the Defendant and she is now in default. Taking into account the several cited authorities and the quotation from the **Halsbury Law of England Volume 32 (4<sup>th</sup> Edition)** at paragraph 725 which provides that'

***“ The mortgagee will not be restrained from exercising his power of sale because the amount due is in despite or because the mortgagor has begun a redemption action or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained however if the mortgagor pays the amount clamed into court that is the amount which the mortgagor claims to be due to him, unless on the terms of the mortgage the claim is excess”.***

The Court has found and held that the amount stated in the Notification of Sale dated **6<sup>th</sup> July 2015**, was within the acceptable value of the suit property.

The Court also found that the certificate of postage was sufficient proof that posting was affected on the last known address of the plaintiff and therefore there was proper service. The Court finds that the plaintiff has not established that she has a prima facie case with probability of success. Further the plaintiffs' suit property has been valued and its value can be ascertained.

Though the Plaintiff stated the suit property is a matrimonial property, the moment it was offered as security for a loan facility, it became a commodity for sale in default of loan repayment. For that reason, the court finds that the plaintiff can be compensated by an award of damages in case she succeeds in the main trial.

On the balance of convenience, this Court finds that it is not in doubt and it will not decide on a balance of convenience.

For the above reasons, the court finds that the applicant's Notice of Motion dated **10<sup>th</sup> September 2015**, is not merited. The Court declines to confirm orders in force and consequently discharged and /or vacates them forthwith.

The said Notice of Motion is hereby dismissed and **Status Quo** orders in force are vacated.

It is so ordered

Dated, Signed, and delivered this **2<sup>nd</sup>** day of **December 2016**.

**L.GACHERU**

**JUDGE**

2/12/2016

Before Hon.Gacheru J

Court Clerk : Vincent

Mr Odour holding brief for Mr Bwire for the Plaintiff/Applicant

Ms Michire for the Defendant/Respondent

**L.GACHERU**

**JUDGE**

**Court:**

Ruling read in open Court in the presence of the above stated advocates.

**L GACHERU**

**JUDGE**

**2/12/2016**