



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, MUSINGA & KIAGE, J.J.A.)

CIVIL APPEAL NO. 84 OF 2007

BETWEEN

KENLINE AGENCIES LTD. APPELLANT

VERSUS

HOUSING FINANCE COMPANY OF KENYA LIMITED..... 1ST RESPONDENT

JOHN GITHUA NJOGU 2ND RESPONDENT

(Appeal against the ruling and order of the High Court of Kenya at Nairobi (Okwengu, J.) dated 23rd March, 2007

in

HCCC. No. 668 of 2006)

JUDGMENT OF THE COURT

This appeal is against the ruling of Okwengu, J. (as she then was) in H.C.C.C. No. 668 of 2006. In that suit the appellant was the plaintiff and he sought an interlocutory injunction to restrain the respondents from registering any other or further documents against the certificate of title registered at the Nairobi Land Registry as **I.R. 17003** in respect of a property known as **Land Parcel No. 209/11475** pending hearing and determination of the suit.

The application was heard and a ruling delivered on 23rd March, 2007 when the same was dismissed. Being dissatisfied with that ruling, the appellant preferred an appeal to this Court. When the appeal came up for hearing, **Mr. Issa**, learned counsel for the 2nd respondent, pointed out that the High Court suit may have been dismissed for want of prosecution, though he had no documentary evidence. **Mr. Njiru**, learned counsel for the appellant, sought an adjournment to enable him check the status of the High Court case, since he was in agreement that in the event that the High Court case had been dismissed this appeal would not stand as its substratum would have been destroyed. The application for adjournment was not granted, consequently the appeal was argued. However, counsel undertook to let the court know the position of the High Court matter.

The Court has now been informed by the Deputy Registrar, High Court Commercial & Tax Division, that

H.C.C.C. No. 668 of 2006 was dismissed for want of prosecution on **23rd February, 2012**. A copy of the dismissal order that was availed to us shows that on the material day the appellant's counsel did not attend court while Mr. Issa appeared for the respondents.

In the circumstances, this appeal cannot stand as it seeks to set aside the interlocutory ruling of 23rd March, 2007 and in effect prevent registration of any further dealing with the suit property pending hearing and determination of the high Court case which is no longer in existence. Consequently, the appeal is for dismissal, which we hereby do. The appellant shall bear the costs of the appeal.

Dated and Delivered at Nairobi this 24th day of April, 2015.

R.N. NAMBUYE

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

P.O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR