



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 261 of 2003**

**SILVANUS KIPRAISI TUBEI .....PLAINTIFF**

**VERSUS**

**KENYA COMMERCIAL FINANCE COMPANY LTD.....DEFENDANT**

**RULING**

By his application of the 3.3.2006 the Applicant seeks to strike out the Plaint herein on the grounds that it is frivolous and vexatious.

The Plaint seeks the following orders:-

**(a) A declaration that there is no charge created by the plaintiff in favour of the defendant in respect to Uasin Gishu Settlement Scheme/123**

**(b) An injunction restraining defendant, its servants, agents and or employees or otherwise howsoever from selling and or disposing off or alienating or otherwise howsoever from interfering with the plaintiff's proprietary rights over Uasin Gishu Settlement Scheme/123.**

**(c) The defendant be ordered to render an account of the process of sale of property known as Eldoret Municipality 8/240**

It is alleged in the Plaint that in respect of a charge over Eldoret Municipality 8/240 the Defendant has exercised its statutory power of sale in respect of monies which it is admitted the Plaintiff had defaulted in paying to the Defendant.

A further averment is that the Defendant has purported to exercise its statutory power of sale in respect of a property owned by the Plaintiff and known as Uasin Gishu Settlement Scheme/123. It is stated in paragraph 8 of the Plaint that attempt by the Defendant to exercise a legally non-existent power of sale not charged to it is unlawful.

Without prejudice the Plaintiff contends that no statutory notice of sale was served by the Defendant.

This allegation is, I presume without prejudice because the Plaintiff claims there is a charge over this property.

The Applicant herein refers to a copy of a charge in respect of the said property which is annexed to the supporting affidavit of Anthony Maino to this application. The copy of the charge shows that it has been stamped and has been executed and duly registered in the appropriate land registry. A copy of a search is also annexed showing that the charge is registered against the title to the property.

No evidence has been adduced by the Respondent to deny the evidence of the charge.

It is clear that the allegation in the Plaint that there is no charge over the property cannot be sustained and the allegation is clearly frivolous.

As a result I strike out paragraph 7 of the Plaint in so far as it avers that the property was never charged to the Defendant as well as prayer (a) in the Plaint.

I will not strike out the whole of the Plaint as there is an allegation that no statutory notice was served which is an issue, which has not yet been resolved.

The Applicant will have the costs of the application.

Dated and delivered at Nairobi this 25<sup>th</sup> day of May, 2006.

**P. J. RANSLEY**

JUDGE



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