



IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, LAKHA & OWUOR, J.J.A)
CIVIL APPLICATION NO. NAI. 423 OF 2001 (228/2001 UR)

BETWEEN

JUDITH M. NJUE APPLICANT

AND

STANDARD CHARTERED BANK OF KENYA LTD.....1ST RESPONDENT

RPREISDPEO NDEONFT MERU HOTELS LTD.2ND RESPONDENT

**(Application for stay of execution from a ruling and
order of the High Court of Kenya at Meru (Mr.
Justice Tuiyot) dated 1st November, 2001**

in

H.C.C.C NO. 151 OF 2001)

RULING OF THE COURT

On 1st November, 2001 the superior court (Tuiyot J.) declined to grant the applicant, Judith Njue an injunction against the respondents, Standard Chartered Bank of Kenya Ltd and Pride of Meru Hotels Ltd., restraining:

"the defendants, their servants and/or agents from taking possession of/or from evicting or otherwise interfering with the plaintiffs possession and quiet enjoyment of the suit land being land title No. NTIMA/IGOKI/3091 until this suit is heard and determined." Further that;

"An order of inhibition do issue forbidding the registration of any dealing whatsoever in land title No. NTIMA/IGOKI/3091 until this suit is heard and determined."

In the same proceedings, the learned judge heard an application by the 2nd respondent, Pride of Meru Hotels Ltd., against the present applicant filed on 29th August, 2001 he granted that application and made orders in the following

t(ae)rTmhsa:t- the plaintiff, her agents, servants, employees, assigns, relatives, members of her family or anybody else whosoever either claiming on her behalf or at her behest are restrained from trespassing, entering, occupying, remaining or wasting land parcel No. NTIMA/IGOKI/3091 and the development therein pending the hearing and determination of the suit and counter-claim filed herein.

(b)The plaintiff be evicted from land parcel No. NTIMA/IGOKI/3091.

Upon dismissal of her application and granting of the 1st respondent's application, the applicant then filed the present application. This application does not present much difficulty because:

"As it is now well settled, the principles which will govern the exercise of our jurisdiction under rule 5(2) (b) of our Rules whether to grant stay or not, are, bearing in mind that no two cases are alike, that stay would be granted if the intended appeal is an arguable one, and in addition, to ensure that the intended appeal if successful, would not be rendered nugatory".

See, **KENINDIA ASSURANCE CO. LTD. AND PATRICK MUTURI C.A NO. NAI 107 OF 1993.**

The dispute between the parties revolves around the sale of the suitland No. NTIMA/IGOKI/3091. According to the applicant, she was until the purported sale the registered owner of the suitland. She guaranteed Sawa Sawa Academy Ltd. and charged the property in favour of the 1st respondent to secure money advanced to the Academy between the years 1988 and 2000. Notwithstanding the fact that the academy had paid sufficient funds to clear and discharge the debt it owed, the 1st respondent instructed auctioneer to sell the charged property ostensibly in exercise of its statutory power of sale as a chargee. That sale according to her was unlawful and wrongful on the grounds that the 1st respondent did not serve her with a valid statutory notice in accordance with section 74 of the Registered Land Act Cap 300. And secondly, that the 1st respondent was not entitled to exercise its statutory powers of sale because the applicant's liability as a guarantor had been fully discharged or extinguished upon payment of the debt owed to the 1st respondent.

These were matters that were canvassed before the learned Judge and upon which he made the findings that he did and which the applicant now intends to appeal against.

We heard submissions from both sides and have considered them in the light of the grounds that the appellants intend to argue in the intended appeal. Our view of the matter at this stage is that it is not possible to say that the two grounds raised before us and in the memorandum of appeal have no merit, or that the appeal is frivolous. We have been persuaded and do find that the appeal is arguable.

As to whether if the stay is not granted, the intended appeal if successful will be rendered nugatory, we are equally of the view that if we do not grant the order of stay, the 2nd respondent having already obtained title of the suit land, there is nothing to stop him from dealing with the same in a manner that would be completely detrimental to the applicant's interest.

We therefore grant stay of execution of the orders of the superior court in this matter until the determination of the intended appeal. Costs of this application shall be in the intended appeal.

Dated and delivered at Nairobi this 21st day of December, 2001.

J. E. GICHERU

JUDGE OF APPEAL

A. A. LAKHA

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.