

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
HCCS (OS) NO. 2 OF 2011

IN THE MATTER OF LAND AND DEVELOPMENTS COMPRISED IN **BUSIRO BLOCK
395 PLOT 1692 AT SEKIUNGA**

AND

IN THE MATTER OF THE MORTGAGE OVER THE SAID PROPERTY IN FAVOUR OF **U-
TURN SERVICES LTD**

AND

IN THE MATTER OF AN APPLICATION FOR FORECLOSURE AND SALE OF THE
MORTGAGE PROPERTY

BETWEEN

U-TURN SERVICES LTD:..... PLAINTIFF/MORTGAGEE

AND

MUGISHA FRANK:..... DEFENDANT/MORTGAGEE

BEFORE: LADY JUSTICE HELLEN OBURA

RULING

This is a ruling in an application for order that an originating summons does issue to the respondent. The applicant brought this application under Order 37 rules 4 and 8 of the Civil Procedure Rules as a mortgagee against a mortgagor in default. The application was argued by Mr. Kwemara Kafuuzi counsel for the applicant. He relied on an affidavit in support sworn by Ms. Grace Kavuya, the director of the applicant/mortgagee sworn on the 24th day of January 2011. Photocopies of a Mortgage Deed (Contract) made by the parties on 6th May 2009 and the respondent's certificate of title are attached to the affidavit as group annexure "A".

The gist of what is deposed in the affidavit which were reiterated by counsel for the applicant in his brief submission are that on the 6th of May 2009, the defendant borrowed US\$60,000,000=

from the plaintiff undertaking to pay it back within six months and a mortgage contract was executed by both parties over the defendant's land with a permanent house comprised in Busiro Block 395 Plot 1692 at Sekiyunga.

That the defendant has defaulted by not paying within the agreed six months and the notice of demand served upon him in 2009 and 2010 was to no avail. That therefore, the defendant ought to be foreclosed of his right to redeem the mortgaged property.

Mr. Kafuuzi submitted that this is a proper case for Originating Summons to issue from this court to the mortgagor to answer the questions set out therein which in effect means he should show cause why he should not be foreclosed of his interest. The questions for determination as set out in the Originating Summons are:

1. Whether the defendants/respondent/mortgagor failed, inspite of repeated demand notices to pay the plaintiff/applicant/mortgagee the sum advanced which was UShs. 60,000,000/- (Sixty million shillings only) and interest accruing after default should be foreclosed of the right to redeem the property mortgaged.
2. Whether the plaintiff/applicant/mortgagee should be permitted to sell the mortgaged land upon foreclosure in accordance with the law.
3. Whether the defendant/respondent/mortgagor shall pay interest at commercial rate of 25% p.a. from the date of default until payment in full.
4. Whether the applicant/mortgagee should be granted costs.

He prayed that court finds that a case had been made out to that effect.

I have perused the affidavit in support of this application and the documents attached thereto. I have also listened to the brief submission of counsel. The photocopy of the respondent's certificate of title shows that the mortgage was registered by the applicant on the title on 14.5.10 at 4.52 p.m as Instrument No. KLA455118.

In accordance with Order 37 rule 8 (2), I am satisfied that the facts contained in the affidavit in support of this application and the annexures are sufficient and this is a proper case to be dealt with an Originating Summons. I accordingly order that the Originating Summons do issue to be served on the respondent/defendant for hearing on a date to be fixed by the Registry.

I so order.

Hellen Obura (Mrs)

Judge

3rd March 2011.

Ruling delivered in the presence of:

1. Mr. Kwemara Kafuuzi for the applicant
2. Ms Ruth Naisamula- Court Clerk

3/03/ 2011