THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) CIVIL SUIT NO. 324 OF 2010

VERSUS

1.DFCU BANK LTD

2.MUPERE ANTHONY t/a ::::::::: RESPONDENTS

Armstrong Auctioneers

RULING BY HON. JUSTICE MR. JOSEPH MURANGIRA

On 2nd May, 2012, Counsel for the plaintiff, Mr. Mbabazi Muhamad, made application to Court to issue directions for the plaintiff to cause the valuation of the suit property by a valuer, whose report shall be used in evidence for the plaintiff.

In reply, Mr. Mulema -Lukasa Richard, Counsel for the defendants does not agree. He submitted that, this prayer in (b) of the plaint of:-

"In the alternative, payment of the monitory equivalent of the current market value of the land to be determined by a valuer appointed by Court".

should be in the final judgment and not in this interlocutory application. That, therefore, it should not be granted at this stage.

Earlier on, Counsel for the defendants submitted that vacant possession or specific performance cannot be done in view of another suit in this Division, HCCS No. 303 of 2010, which is directly touching the suit property. That being the position in this case, the alternative prayer as put across by Counsel for plaintiff has to be tackled at this stage of the proceedings in this suit. Evidence has to be adduced to prove the same by the plaintiff as the available remedy to him.

However, I hasten to add that the suit property was mortgaged to the 1st defendant, and its sale or purported sale by the 1st defendant is being challenged by the registered owner in HCCS No. 303 of 2010. That is, to say, the 1st defendant has so far no claim over the said suit property. This Court, therefore, cannot order the valuation of somebody's property without his/her consent. The suit property is private property and the owner is not a party to this suit. The rights over the suit property of the registered proprietor ought to be observed and respected.

In the result and for the reasons given hereinabove, the plaintiff's counsel's prayer for an order to have the suit property valued for purpose of the plaintiff prove the current market price of the suit property is not granted.

The plaintiff is advised to use other methods available to determine the ongoing prices of properties/land in that area.

Dated at Kampala this 3rd day of May, 2010.

Murangira Joseph Judge