



**Githui v Stanbic Bank Kenya Limited & 2 others (Civil Case E153 of 2023)
[2024] KEHC 10277 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10277 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E153 OF 2023
PM MULWA, J
AUGUST 15, 2024**

BETWEEN

STEPHEN MWANGI GITHUI APPLICANT

AND

STANBIC BANK KENYA LIMITED 1ST RESPONDENT

PHILIPS INTERNATIONAL AUCTIONEERS 2ND RESPONDENT

PROJECT 254 LIMITED 3RD RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 12th February 2024 seeking a temporary injunction restraining the 3rd Respondent, their servants, workmen, licensees, agents or any other persons acting on their behalf from evicting, accessing and/or interfering with the property Maisonette No 23 Within Court H part of LR No 21103/1(Vol N138 Folio 40 File 35485) pending the hearing and determination of the application dated 22nd May 2023.
2. To pave way for the hearing and determination of the latter application, the application dated 12th February 2024 was on 26th February 2024 deemed as abandoned.
3. The Amended Notice of Motion dated 22nd May 2023 seeks orders to set aside the sale of the above referred property, a stay of any auctioneering proceedings regarding the said property and injunctive orders preventing any interference of the said property pending determination of the main suit herein.
4. The same was opposed by the respondents who jointly held the view that there is no reasonable cause of action against them.



5. The court has carefully considered the application, the response therewith as well as the written submissions by the parties. It is notable that in the said application, the applicant seeks an order of injunction. The main issue for determination, therefore is whether the applicant has made out a case for the grant of injunctive orders.
6. The gist of the applicant's case was that he applied for a loan facility of KShs. 9 million from the 1st respondent. Upon default the 1st respondent proceeded to issue the applicant with the requisite notices as provided under the *Land Act*. The 2nd respondent through the instructions of the 1st respondent proceeded to auction the property on 12th April 2023.
7. The applicant argues that he is contesting the sale of the property by public auction and the same is the subject matter of the main suit. In addition, the applicant stated that there is an imminent and inherent risk of the plaintiff being evicted from the suit property before the main suit is determined hence the orders sought.
8. The Court of Appeal in *Giro Commercial Bank Limited v Halid Hamad Mutesi* [2002] eKLR stated thus:

“It has been held time and again that a mortgagee cannot be restrained from exercising his power of sale because the amount due is in dispute or that the mortgagee has commenced a redemption action or because the mortgagor objects to the manner in which the sale is being arranged. In that case, where the debt is admitted as due and the loan is not being serviced, the court should not grant an injunction”.
9. It was the respondents' submissions that the applicant has failed to demonstrate to the Court that the temporary injunction he seeks is tenable. That there is no basis for setting aside the auction and/or grounds for issuing an injunction to restrain completion of the sale of the property.
10. In *Charter House Investments Ltd. v Simon K. Sang & 3 others* [2010] eKLR, the Court of Appeal stated:

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right even where irreparable injury is likely to result to the applicant. It is a matter of sound judicial discretion, in the exercise of which the Court balances the convenience of the parties and possible injuries to them and to third parties.”
11. It is undisputed that the parties duly executed the loan agreements and charges and were bound by the rights and obligations under the contracts. Later, the applicant defaulted hence the Statutory Notices and demands for the outstanding amount. The 2nd respondent through the instructions of the 1st respondent proceeded to auction the suit property on 12th April 2023.
12. It is the court's considered view that the injunctive orders being sought by the applicant in the Notice of Motion dated 22nd May 2023, to restrain the disposal of the suit property by way of public auction has already been overtaken by events. It is equally undisputed that the property was sold through a public auction and at this point there is no loss that would not be compensated by damages to warrant the grant of an injunction.



13. The chargee exercised its power of sale pursuant to default by the applicant and in the circumstances of this case, any order that would effectively maintain the status quo would inevitably inflict greater hardship than it would avoid.
14. Considering all the circumstances, the Court's finding is that this is not a proper case for granting a temporary injunction and therefore the amended motion dated 22nd May 2023 is hereby dismissed with costs. The main suit to be set down for hearing.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

P. MULWA

JUDGE

In the presence of:

Mr. Rukwaro h/b for Mr. Kamau for Applicant

Ms. Wangari for 1st & 2nd Respondents

Mr. Esilaba for 3rd Respondent

Court Assistant: Lilian

