



REPUBLIC OF KENYA



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**Njuguna & Partners Advocates v Okeyo (Commercial Case E086 of 2021)
[2024] KEHC 14881 (KLR) (Commercial & Admiralty) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14881 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
COMMERCIAL CASE E086 OF 2021
H NAMISI, J
NOVEMBER 28, 2024**

BETWEEN

NJUGUNA & PARTNERS ADVOCATES CREDITOR

AND

ERICK OKEYO DEBTOR

RULING

1. In Notice of Motion dated 18 November 2024, the Applicant seeks the following orders:
 - i. (spent)
 - ii. An order of injunction be and hereby issue restraining the Debtor from transferring, leasing or otherwise alienating Land Reference No. 14968/167 Kiambu Grant Number 73418 pending the hearing and determination of this Application inter partes;
 - iii. An order of injunction be hereby issue restraining the Debtor from transferring, leasing or otherwise alienating Land Reference No. 14968/167 Kiambu Grant Number 73418 until payment in full of the Creditor debt and costs of these proceedings;
 - iv. That the cost of this application be borne by the Debtor
2. The Application, which is brought under the provisions of Order 40 Rules 1 (b), 3 (3) and 4(1) of the Civil Procedure Rules as well as sections 1A, 1B and 3A of the *Civil Procedure Act*, is supported by an Affidavit sworn by Charles Njuguna, Advocate and premised on the grounds on the face of it.
3. This Application comes against the backdrop of the Creditor's petition, which had been reserved for judgement.



4. In the Supporting Affidavit, the Applicant avers that following the issuance of a decree on 29 May 2019 in High Court Misc Application No. 200 of 2017 for the sum of Kshs 3,415,656/= plus interest thereon at 14% per annum from 23 December 2017 until payment in full. The Creditor/Applicant avers that as at 7 November 2024, the outstanding amount is Kshs 2,742,015.04.
5. It is also averred that after all attempts to trace the Respondent's assets failed, the Creditor commenced the insolvency proceedings to recover the said sum. Through the course of the proceedings, the Creditor/Applicant has indulged the Debtor/Respondent and given him numerous chances to settle the debt. The Applicant avers that prior to the court attendance on 11 November 2024, the Debtor intimated that he was in the process of selling an asset, the subject property herein, in a bid to settle the outstanding amount.
6. When parties appeared before Court on 12 November 2024, the Creditor informed Court that one cheque had since bounced. The Debtor's counsel indicated that the same had been communicated to the Debtor and the said amount would be cleared by close of business. It would seem that this never happened.
7. The Applicant is apprehensive that if the said property is sold, the Debtor will exhaust the proceeds without settling the debt, and render the Petition nugatory.
8. In response to the Application, the Debtor filed a Replying Affidavit dated 26 November 2024. The gist of the response is that this application is filed in bad faith with the sole intention of oppressing, embarrassing and humiliating him. He avers that the same is incompetent and fatally defective. Although the Debtor admits that there was an outstanding amount at the commencement of these proceedings, he avers that the amount has since been settled in full. He also stated that the property in question, though jointly owned, belongs to his wife, who is not a party to these proceedings.
9. The application was canvassed orally.
10. It is not denied that there is an ongoing sale transaction in respect of the subject property. It is also not denied that the Debtor is a joint owner of the said property, though he claims that the same belongs to his wife.
11. The Debtor denies owing any monies to the Creditor. This is surprise even to the Court, considering that the Debtor's counsel stated that the sums owed as at 12 November 2024, in respect of the bounced cheque, would be cleared by close of business that day. No evidence has been presented or averment made that the said money was paid. In fact, his counsel, while submitting on the issue of bad faith, noted that this application was filed on the morning of 18 November 2024 yet the parties were scheduled to meet that very afternoon in order to discuss an amicable settlement to this matter. Why would parties be meeting to discuss an amicable settlement of a debt that doesn't exist?
12. Counsel for the Debtor submitted that the provisions of the [Civil Procedure Act](#) do not apply herein and as such, this application is incompetent and fatally defective. It was his argument that the [Insolvency Act](#) has cleared Regulations that provide for applications and proceedings in an insolvency matter. Respectfully, I disagree with this argument. Counsel did not point out any particular provision in the [Insolvency Act](#) that precludes the application of the [Civil Procedure Act](#).
13. Counsel for the Debtor also delved into the drafting of the application. Much as I may agree that the drafting of the prayers leaves a lot to be desired, one cannot overlook the fact that the Debtor admitted to being in the process of selling of an asset that is jointly owned by him. Equity cannot suffer a wrong to be without remedy.



14. Turning to the principles in granting an application for temporary injunction, the Applicant must satisfy the triple requirements as enunciated in numerous cases, including *Nguruman Limited v Jan Bonde Nielsen, Herman Philipus Steyn Also Known As Hermannus Phillipus Steyn & Hedda Steyn (Civil Appeal 77 of 2012)* [2014] KECA 606 (KLR) (Civ). These are:
- (a) establish his case only at a prima facie level,
 - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
 - (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.
15. Looking at the application and the response, and having heard both counsel, I am of the considered view that the three requirements have been satisfied. For that reason, I grant the injunction and hereby restrain the Debtor from transferring, leasing or otherwise alienating Land Reference No. 14968/167 Kiambu Grant Number 73418 pending the determination of the Creditor's Petition.

DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Njugunafor the Creditor/Applicant

Omwebu.....for the Debtor/ Respondent

