



REPUBLIC OF KENYA



**KENYA LAW**  
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**Paksons Enterprises Limited & another v Kenya Commercial Bank & another  
(Civil Suit 4 of 2022) [2024] KEHC 16006 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL SUIT 4 OF 2022  
JK SERGON, J  
DECEMBER 18, 2024**

**BETWEEN**

**PAKSONS ENTERPRISES LIMITED ..... 1<sup>ST</sup> APPLICANT**

**WESLEY ROTICH ..... 2<sup>ND</sup> APPLICANT**

**AND**

**KENYA COMMERCIAL BANK ..... 1<sup>ST</sup> RESPONDENT**

**GARAM INVESTMENT AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application coming up for determination is a notice of motion dated 2nd December, 2024 seeking the following orders;
  - (i) That pending the 13th February, 2024 ruling on the Plaintiff's application dated 7th October, 2024 orders of status quo of the suit properties be made.
  - (ii) That the applicant be granted leave of the court to file and serve brief written submissions on the application dated 7th October, 2024 within four (4) days from the date of the orders granting leave.
  - (iii) That the ruling date of 13th February, 2025 given by the court be maintained.
  - (iv) That the honourable court issues such directions as will serve the interests of justice in the circumstance of this case.
2. The application is based on the grounds stated on the face of it and the facts deponed in the supporting affidavit of Wesley Rotich the 2<sup>nd</sup> Plaintiff/Applicant.
3. The Applicant avers that this court in its ruling of 31st October, 2023 granted injunctive order against the 1st Respondent from selling, offering for sale, further advertising for sale, threatening to sell or



in any other way dealing adversely with the properties known as L.R No. 631/1582 and Kericho Municipality Block 2/30 ACK Business Centre.

4. The Applicant avers that they instructed their advocates to file an application for extension of time to prosecute the main suit as it was time restricted in one of the orders contained in the ruling.
5. The Applicant avers that the advocates filed an application dated 7th October, 2023 and that the said application came up for inter partes hearing on 21st November, 2024 by way of oral submissions and that on the said date the Applicant logged in on the online platform to listen to the proceedings, however, there were internet challenges. The Applicant is therefore seeking for leave to file brief written submissions via this application to avert a possible miscarriage of justice resultant from technological challenges.
6. The Applicant avers that they were apprehensive that considering the ruling date of 13th February, 2025 is still far, interim orders of injunction and status quo of the suit properties were imperative to avoid the impending sale of the suit properties during the intervening period awaiting the ruling.
7. The Applicant avers that they have paid Kshs. 3,000,000/= million to the 1st Respondent in a bid to repay the loan and that the arrangements to liquidate some of the assets to raise money to pay the entire loan are at an advanced stage and once this materializes, they will clear the outstanding loan and/or pay a substantial amount and enter into a restructure of the outstanding amounts.
8. The Applicant avers that the instant application is made in good faith to forestall imminent and the real risk of the disposal of the suit properties in the intervening period awaiting the ruling of this court on 13th February, 2025 and that no prejudice will befall the Respondent if status quo of the suit properties is maintained.
9. The Applicant avers that it is therefore in the interests of justice that the suit properties be preserved pending the determination of the application dated 7th October, 2024 and the main suit.
10. Joseph Muli, a Recovery Manager at Kenya Commercial Bank and the 1st Respondent filed a replying affidavit in response to the application.
11. The 1st Respondent vehemently opposed to the application based on the following grounds;
  - (i) This Honourable Court has previously considered and declined the applicants request to extend its order of interim injunction which maintained the status quo and that the applicants have failed to aptly demonstrate any change in circumstances or provide a legal basis to justify the issuance of status quo.
  - (ii) The application is tainted with misleading claims by the applicant's counsel alleging that network and device issues hindered delivery of oral submissions.
  - (iii) The applicants have demonstrated a lack of diligence in prosecuting their suit having failed to take meaningful steps to set the matter for hearing over a year and instead inundated this honourable court with multiple unwanted applications.
  - (iv) The application is an abuse of court process, aimed at vexing the 1st respondent with a barrage of unnecessary applications.
  - (v) If the court were to grant status quo order sought, the applicants are likely to delay the matter indefinitely, ensuring it never proceeds for hearing.



12. The 1st Respondent avers that even if the status quo order is not granted and it exercises the statutory power of sale concerning the suit properties, the court retains the power to award damages to the applicants should the court find in their favour upon determination of the suit.
13. This court directed the parties to canvass the application via written submissions.
14. The 2nd Plaintiff/Applicant filed their submissions, they maintained that they were apprehensive that the suit properties face the real risk of disposal by the respondents and that status quo orders would ensure that the suit properties are within the jurisdiction of this court.
15. The applicants submitted that this court has the inherent power to grant leave to the applicants to file written submission in respect to the application dated 7th October, 2024 under sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* and 159 (2) (d) of *the constitution* to ensure that the interests of justice are met. They cited the case of Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints [2016] eKLR where the court held that; “Section 3A of the *Civil Procedure Act* appears to have been introduced to augment the provisions of section 3, vesting in the court’s inherent power to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Of course this power has now been broadened by the introduction in 2009 of overriding objective in sections 1A & 1B and in 2010 by Article 159 of *the Constitution*.” The applicants were not opposed to corresponding leave being granted to the respondents to put in their written submissions.
16. The 1st Defendant/Respondent filed their submissions, maintained that the attempt to secure order maintaining status quo constitutes an abuse of court process in light of this court’s ruling on 31st October, 2023 which directed the applicants to expedite hearing of the suit on its merits.
17. The 1st Respondent also argued that the applicants have displayed a consistent lack of diligence in prosecuting their case, having taken no substantial steps to set up the matter for hearing for over a year and instead filed various unwarranted applications. They cited the case of Geoffrey Kipyegon Moi v Linet Minagi Mshamba & another [2022] eKLR the court stated as follows; “20. It is generally accepted that the court is entitled to protect itself from abuse, as persuasively stated by the court in Stephen Somek Takweny & Anor vs David Mbuthia Githare & 2 Others Nairobi (Milimani HCC No. 363 of 2009) as follows: “...The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilized legal process, it is the machinery used in the courts of law to vindicate a man’s rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused. An instance of this is when it is diverted from its proper purpose, and is used with some ulterior motive for some collateral one or to gain some collateral advantage, which the law does not recognize as a legitimate use of the process. But the circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instances. Others attract res judicata rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop the proceedings, or put an end to it.”
18. The 1st Respondent reiterated that even if the status quo order is not granted and it exercises the statutory power of sale concerning the suit properties, the court retains the power to award damages to the applicants should the court find in their favour upon determination of the suit.



19. The 1st Respondent argued that granting status quo would severely prejudice it as it would be impeded from exercising the statutory power of sale but also face continued accumulation of interest and penalties on the applicant's outstanding debt, which the applicants are unlikely to pay.
20. The 1st Respondent argued that the applicants are undeserving of leave to file and serve brief written submissions on the application dated 7th October, 2024 which came up for hearing on 21st November, 2024, the parties made oral submissions and the court followed along and set a date for ruling and further the attempt to seek leave to file written submissions without granting a corresponding right to the respondents would violate the right to a fair hearing under article 50 of *the constitution*.
21. I have considered the application, responses and submissions by parties and I find that the issue (s) for determination are whether to maintain status quo pending the ruling dated 13th February, 2024 and grant leave for the applicant to file written submissions.
22. On the issue as to whether to maintain the status quo pending the ruling dated 13th February, 2024. The applicants argued that they were apprehensive that the suit properties face the real risk of disposal by the respondents and that status quo orders would ensure that the suit properties are within the jurisdiction of this court.
23. The Respondents contended that status quo orders would impede them from exercising the statutory power of sale and that they faced the continued accumulation of interest and penalties on the applicant's outstanding debt, which the applicants are unlikely to pay. This court finds that the application dated 7th October, 2024 is pending ruling and determination by this court on 13th February, 2025 and one of the issues to be determined by this court is the further extension of the interim order and the maintenance of status quo pending hearing and determination of the main suit. It is therefore premature to delve into the issue of the status quo at this point as the said issue is pending ruling on 13th February, 2025.
24. On the issue as to whether to grant leave for the applicant to file written submissions, the applicant argued on 21st November, 2024 when the matter came up for inter partes hearing, there were technological challenges and therefore it was prudent to have this court grant leave to file brief submissions in respect to the application dated 7th October, 2024 and thereby avert a possible miscarriage of justice resultant from technological challenges.
25. The respondent maintained that the applicants were undeserving of leave to file and serve brief written submissions on the application dated 7th October, 2024 which came up for hearing on 21st November, 2024, whereby the parties made oral submissions and the court followed along and set a date for ruling and further the attempt to seek leave to file written submissions without granting a corresponding right to the respondents would violate the right to a fair hearing under article 50 of *the constitution*.
26. Having considered the submissions by the parties, this court has carefully perused the record and finds that on 21st November, 2024, this court was aptly able to capture the oral submissions made by the parties in court and subsequently set a date for ruling on the said application, there is therefore no need to grant leave to file further submissions.
27. Consequently, the summons dated 2nd December, 2024 is partially allowed to the extent that the status quo order will be extended pending the ruling of this court 13th February, 2025. Each party to meet their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 18TH DAY OF DECEMBER, 2024**



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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Mutinda holding brief for Mbaye for Respondent

No Appearance for the Applicant

