



REPUBLIC OF KENYA



**KENYA LAW**  
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**African Wine Limited v Equity Bank Kenya Limited (Commercial Suit E011 of 2022) [2023] KEHC 27395 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27395 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
COMMERCIAL SUIT E011 OF 2022  
DO CHEPKWONY, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**AFRICAN WINE LIMITED ..... PLAINTIFF**

**AND**

**EQUITY BANK KENYA LIMITED ..... DEFENDANT**

**RULING**

1. Before the court for determination is the Notice of Motion application dated 19<sup>th</sup> May 2023 which is filed pursuant to Order 40 and 51, both of the [Civil Procedure Rules](#) and Section 5 of the [Judicature Act](#) in which the Applicant seeks the following orders:
  - a. Spent.
  - b. That the Directors of the Respondent be held and found to be in contempt of the court due to their wilful disobedience of the court orders issued on the 7<sup>th</sup> day of September, 2022.
  - c. That consequent to the grant of prayer No.2 above, the Respondent and/or his agents as contemnors be committed to jail for a duration not exceeding six (6) months and/or such other duration as this Honourable Court may deem fit and expedient and in addition to or in the alternative to this do impose an appropriate penalty/fine upon the contemnors.
  - d. That pending the hearing and determination of this application, there be a temporary stay of execution of the advertised auction by Antique Auctioneers set to take place on the 7<sup>th</sup> day of June, 2023 at 11.00 am in their offices.
  - e. That the Respondent and/or their agent Antique Auctioneers be cited for contempt of court for disregarding, disobeying and or ignoring the Order of this Honourable court dated 7<sup>th</sup> September, 2022.



- f. That consequent to this that Honourable Court impose such other sanctions or orders it deems fit until the said contempt is expunged.
  - g. That costs of this application be borne by the Respondent.
2. The application is based on the Supporting Affidavit of John Mwaura sworn on 19<sup>th</sup> May, 2023 on the following grounds:-
- i. That on 30<sup>th</sup> August, 2022, the Applicant filed an application under Certificate of Urgency seeking orders to restrain the Respondent and/or his agents from attaching, Advertising, auctioning or selling its property known as LR. No 28867/1, Unit No. L353, Tatu Industrial Park and/or interfering with the Applicant's right to quiet possession.
  - ii. That this Honourable Court issued temporary orders on 7<sup>th</sup> September, 2022 (hereinafter the said Order") restraining the Respondents by themselves, their employees and/or agent from attaching, advertising, auctioning or selling the Applicant's property known as L.R. NO 28867/1, Unit No. L3-53, Tatu Industrial Park and/or interfering with the Applicant's right to quiet possession until 19<sup>th</sup> September, 2022 when the matter was to be mentioned before a Judge for directions and/or further orders pending the inter parties hearing of the Plaintiffs Application.
  - iii. That the said orders were served and acknowledged by the Respondent and/or their agent and as such, they are well aware of the same and the said orders are still in force to date.
  - iv. That the said Order was intended to maintain status quo of the matter barring any action or attempt to sale by the Respondent and/or their agents pending the inter-parties hearing of the Applicant's Application.
  - v. That when the matter was next mentioned for directions, the orders issued were extended pending inter-parties hearing after both parties file their pleadings and the matter set down for hearing.
  - vi. That the hearing of the matter has not yet taken place and as such the orders issued on 7<sup>th</sup> September, 2022 take precedence and primacy over any other direction as the same has not heard, spent or vacated.
  - vii. That to the Applicant's surprise, the Respondent and/or his agents went ahead to ignore, disobey and disregard the orders issued by this Honourable Court and issued instructions to Antique Auctioneers to proceed and have the said property advertised for auction on the 7<sup>th</sup> June, 2023 at 11:00a.m in their offices.
  - viii. That the Defendants and/or his agents have blatantly, deliberately and patently disregarded the court orders and acted in contempt of court by placing for sale via auction the said parcel of land notwithstanding the fact that the said orders are still in effect and force.
  - ix. That this Honourable Court would be in its jurisdiction and purview to issue a stay of execution of the sale intended by Antique Auctioneers on the 7<sup>th</sup> June, 2023 at 11:00a.m in their offices.
  - x. That Plaintiff/Applicant stands to suffer a major loss unless this Honourable Court urgently intervenes.
  - xi. That the actions of the Respondents constitute the grossest and most callous disobedience of valid court orders whose terms were plain, obvious, unambiguous and unequivocal.



- xii. That the intentional frustration of valid court order is contemptuous and this Honourable Court needs to intervene to ensure that its authority is protected.
  - xiii. That no prejudice will be occasioned to the contemnors should this Honourable Court grant the orders sought in the instant application.
  - xiv. That under these circumstances, it is only just and fair that this Application be certified urgent and the Defendant and/or his agent be stopped from proceeding with the intended auction.
3. The Application was opposed through Grounds of Opposition dated 2<sup>nd</sup> June, 2023 on the following grounds:
- a. That the injunctive orders relied upon by the Applicant in the present Application lawfully lapsed on 19<sup>th</sup> September, 2022;
  - b. That the subsequent status quo orders enjoyed by the Applicant lapsed on 17<sup>th</sup> April, 2023 and were never extended by a court of competent jurisdiction;
  - c. That the Applicant has not approached court with clean hands since it has made no effort in clearing the loan arrears for which it is in default even after obtaining the said status quo orders; and,
  - d. That this court lacks the capacity to grant the order for stay of execution over a looming auction as sought by the Applicant since the same is not an order contemplated in law under Order 40 of the Civil Procedure Rules, 2010, and further because there is no decree to be executed in the first place.
4. The Applicant filed Supplementary Affidavit sworn by John Mwaura sworn on 9<sup>th</sup> June, 2023. He reiterates that the court orders of 7<sup>th</sup> September, 2022 in question were still operational pending the interparte hearing of 19<sup>th</sup> September, 2022 but on which date the court was not sitting. Again, on 13<sup>th</sup> December, 2022 the court was still not sitting but the court still extended the interim orders until 17<sup>th</sup> April, 2022 on which date the court was still not sitting.
5. The Applicant holds that the Respondent took advantage of the fact that the court was not sitting and since no orders had been issued and in contempt of court instructed the auctioneers to proceed in contempt of court. The Applicant has thus urged the court to cite the Directors of the Respondent for contempt for disobeying court orders.
6. The court directed the application to be disposed off by way of written submissions which have been filed by both parties and the court has duly considered the arguments therein.

### **Analysis and Determination.**

7. To determine his application, the court has read through the affidavits sworn in support and opposition thereof alongside the respective submissions and the applicable law in respect of the prayers sought. For consideration by the court is:-
- a. Whether or not the Directors of the Respondent and or their agent can be found and held in contempt of court orders: and if so,
  - b. Can they be committed to civil jail;
  - c. Whether a stay of execution of the advertised eviction by



### **Antique Auctioneers can issue.**

8. With regard to the first issue, the court orders in question were issued on 6<sup>th</sup> September, 2022 when the court granted interim orders to last until 19<sup>th</sup> September, 2022. On the said 19<sup>th</sup> September, 2022 the court directed the matter to be fixed for inter parties hearing on 13<sup>th</sup> December, 2022 and for the status quo was to be maintained until then.
9. That on 13<sup>th</sup> December, 2022, the court was not sitting and the matter was placed before the Deputy Registrar who directed the parties to file written submissions, gave them a mention date of 17<sup>th</sup> April, 2023 and for the status quo was to be maintained until then.
10. On 17<sup>th</sup> April, 2023, the trial court was on leave and therefore the matter was fixed for further mention on 20<sup>th</sup> June 2023. It was at that point that the Respondent proceeded to instruct auctioneers to proceed with the sale and the Applicant filed the present application.
11. The court in the case of *Sidolana General Services –vs- Kilifi County & another* (Civil Case 170 of 2012) [2021] KEHC 9815 (KLR) (1 September 2021) (Ruling) held,

“Since the interim stay order was never extended, the same is deemed to have lapsed thus opening the door for other procedural processes to follow among them taxation of a bill of costs”.
12. In the instant case, on 17<sup>th</sup> April, 2023 the interim orders were not extended and no directions were given to that effect. It was the duty of the Applicant to move the court for extension of the said orders for them to continue enjoying them. In absence of an application and order for extension of the court orders, the Respondent cannot be held in contempt of court as there were no orders in force.
13. This court thus finds that the Notice of Motion application dated May 19, 2023 lacks merit and the same is dismissed with costs to the Respondent. The interim stay of execution orders in place also stand discharged.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Anyiele holding brief for Mr. Okatch for Plaintiff/Applicant

Mr. Munene holding brief for Mr. Kuria for Defendant/Respondent

Court Assistant - Martin

