



**Erdemann Property Limited v Credit Bank Limited (Civil Case E419 of 2022)
[2023] KEHC 24374 (KLR) (Commercial and Tax) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E419 OF 2022
A MABEYA, J
OCTOBER 24, 2023**

BETWEEN

ERDEMANN PROPERTY LIMITED PLAINTIFF

AND

CREDIT BANK LIMITED DEFENDANT

RULING

1. Vide an application dated 8/8/2023, the plaintiff sought the following orders: -

- “1. Spent.
2. That the Honorable Court be and is hereby pleased to grant an Order of injunction restraining the Respondent Bank, its agents, officers, employees or anyone howsoever claiming under its authority from in anyway howsoever interfering with the Applicant’s quiet possession over LR. 12867/13(LR 36277) including barring any alienation, sale by auction or otherwise or in any way disposing off of the subject property pending hearing and determination of the Appeal against the Ruling delivered on 28th July, 2023.
3. That the Honorable Court be and is hereby pleased to Order the Applicant to lodge its substantive Appeal against the Ruling delivered on 28th July, 2023, within forty-five (45) days of the Order by this Honorable Court.
4. That in the alternative to prayer 2 and 3 above, the Honorable Court be and is hereby pleased to grant an Order of injunction restraining the Respondent Bank, its agents, officers, employees or anyone howsoever claiming under its authority from in anyway howsoever interfering with the Applicant’s quiet



possession over LR. 12867/13(IR 36277) including barring any alienation, sale by auction or otherwise or in any way disposing off of the subject property pending hearing and determination of an Application for injunction under Rule 5(2)(b) *Court of Appeal Rules, 2022* — to be filed within fourteen (14) days of the Order of this Honorable Court.

5. That the Honorable court be and is hereby pleased to issue any further directions or orders as may be appropriate to give effect to the Orders sought herein; and
 6. The costs of this Application be provided for.”
2. The grounds for the application were set out in its body and the supporting affidavit sworn by Mr. Zeyun Yang, the plaintiff’s Managing Director.
 3. The grounds were that the plaintiff was exposed to grave prejudice following the delivery of the ruling of 28/7/2023 which set-aside the subsisting restraining orders against the defendant. Those orders had barred the defendant from interfering with the plaintiff’s quiet possession over LR. 12867/13 (LR 36277) (hereinafter ‘the suit property’) including barring any alienation, sale by auction or otherwise or in any way disposing off the same.
 4. That in the said ruling, the Court held that since the prayer sought in the disallowed application dated 25/10/2022 and an earlier application dated 25/9/2018 in HCC 21 of 2018 were similar, then the latter Motion was barred by res judicata.
 5. That the plaintiff was gravely displeased by the impugned decision and had lodged an appeal against the same vide the Notice of Appeal lodged on 3/8/2023. That the Court has jurisdiction to grant the preservatory orders sought through its inherent jurisdiction and grant justice despite having declined to grant the injunction earlier sought.
 6. It was the plaintiff’s case that if the preservatory reliefs sought are granted, the defendant will not suffer any prejudice as the security that it continues to hold will still be good security for the foreseeable future as it is currently valued at Kshs. 2 Billion against an outstanding debt of Kshs.622,072,565/-. That if the orders sought were not granted, the intended appeal will be rendered nugatory as the defendant would proceed to sell the suit property.
 7. The defendant filed a replying affidavit sworn on 16/8/2023 by Wainaina Francis Ngaruiya, its head of legal services.
 8. The defendant argued that the plaintiff was seeking for an injunction again yet this Court had already rested the issue as to whether the plaintiff was entitled to an injunction through the ruling of 28/7/2023. That this was the third time that the plaintiff was seeking an injunction on the suit property having earlier filed an injunction application in Machakos HCC 21 of 2018 which was denied vide a ruling dated 22/10/2018.
 9. The defendant argued that it is not in the interest of justice for courts to reopen issues that have already been determined. That the plaintiff and its associates are significantly indebted to the defendant and the plaintiff’s intention in filing applications and new suits is to stall recovery of the colossal amounts owed which are over Ksh.817,819,352.06.
 10. Both parties have filed their respective submissions which I have considered.
 11. The crux of the matter is whether the plaintiff should be granted the orders of injunction pending appeal.



12. In a ruling dated 28/7/2023 in this suit, the court found that the issue of whether an injunction could be issued to restrain the exercise of power of sale by the defendant over the suit property had already been heard and determined in Machakos HCCC No.21 of 2018 where the court declined issuing an injunction. Paragraph 19 thereof stated:

“It matters not that the grounds relied upon in seeking substantially a similar prayer were the same or not. The end goal is to obtain an injunction restraining the Defendant from exercising its statutory power of sale over the same property.”

13. In the subject application before me, the plaintiff seeks an injunction again to restrain the defendant from interfering with its quiet possession over the suit property pending determination of the appeal against the ruling of 28/7/2023 on the grounds that if the preservative orders herein are not granted the intended appeal will be rendered nugatory as the defendant would proceed to sell the suit property.

14. The plaintiff is essentially seeking the same orders over the same subject matter before this court albeit on different grounds. The court, on two occasions already declined to issue an injunction to halt the statutory power of sale and the plaintiff cannot relitigate the same issues again.

15. The court became *functus officio* once it rendered its decision on 28/7/2023 and the only recourse that the plaintiff has is through an appeal.

16. It seems that the plaintiff is keen on stalling the defendant's right to exercise its statutory power of sale by filing various applications and suits seeking interlocutory injunctions to stop the sale of the suit property despite the fact that it is undisputed that it has failed to regularize the loans offered to it by the defendant.

17. Based on the preceding paragraphs, I find that the application before me is an abuse of the court process and this court is now *functus officio*. I dismiss this application entirely with costs awarded to the defendant.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2023.

A. MABEYA, FCI Arb

JUDGE

