



REPUBLIC OF KENYA



**Karanja t/a Penka Enterprises v Equity Bank Limited & another (Civil Case E567 of 2021)
[2023] KEHC 26904 (KLR) (Commercial and Tax) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26904 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E567 OF 2021
A MABEYA, J
DECEMBER 15, 2023**

BETWEEN

**PENINAH NYAKIO MBURU KARANJA T/A PENKA
ENTERPRISES PLAINTIFF**

AND

**EQUITY BANK LIMITED 1ST DEFENDANT
ANTIQUA AUCTIONS 2ND DEFENDANT**

RULING

1. On 10/5/2021, the plaintiff lodged in court, under a Certificate of Urgency, a Motion on Notice dated 6/5/2021. She sought interlocutory injunctive orders to restrain the defendant (“the bank”) from exercising its statutory power of sale over LR No. 209/17749 (IR NO. 110847) and Kajiado/Kaputei – North/396 (“the suit properties”).
2. The suit properties had been given as security for the advance of undisclosed sums in or about February, 2017. The court certified the application urgent and directed that the same be served for, inter-partes hearing on 19/5/2021. Although served, the defendant did not appear and the court deemed the application un-opposed and granted the same as prayed.
3. Thereafter, the parties undertook pre-trials which were concluded a year later. On 24/10/2022 in order to expedite the hearing, the Court ordered the matter fixed for trial on 23rd and 29th May, 2023. Come



the 23rd May, 2023, neither the plaintiff nor the defendant or their advocates appeared. The court recorded the following order:-

“In the absence of the parties, I will not dismiss the suit but will adjourn it to 29/5/2023 as scheduled”.

4. On 29/5/2023, the plaintiff applied for adjournment on the ground of indisposition. The court granted the adjournment but directed that the plaintiff forthwith commences repayment of the loan in default the orders in force be subject to be lifted. The court then fixed the matter for hearing on 27/11/2023.
5. On 21/11/2023, the defendant lodged a Motion on Notice under Article 159 (1) of the Constitution, Order 40 Rule 6 and Sections 1A, 1B and 3A of the Civil Procedure Act seeking to discharge the Orders made on 24/5/2021. That application was supported by the affidavit of Mary Katoni sworn on 21/11/2023.
6. The grounds in support were that, the plaintiff was unwilling to prosecute the suit because of the ex parte orders in force. That she had not complied with the Court directions that she complies with pre-trials or she commences to repay the loan. That in any event, the order had lapsed by effluxion of time.
7. The said application came up for directions on 27/11/2023 when the matter was fixed for trial. The court made the following directions: -

“The application be responded to within 7 days. Within 7 days thereafter, parties file and exchange 1 page submissions. Ruling on 15/12/2023.”
8. As at 6/12/2023, the said application had not been responded to. Since the time for responding to the said application expired on 4/12/2023, it is clear that the application was unopposed.
9. Be that as it may, I have considered the record. The application must succeed. It is not in dispute that the ex parte injunction was made on 24/5/2021. Under Order 40 of the Civil Procedure Rules; interlocutory injunctions have a lifespan of 12 months. Accordingly, the said order expired by effluxion of time on 23/5/2022.
10. The other issue is the plaintiffs’ reluctance to prosecute her case and/or show bona fides by doing equity. The suit is in its 3rd year yet she has not taken any steps to comply with pre-trials. Further, on 29/5/2023, the Court ordered that she immediately commences repaying the loan but she never complied.
11. In view of the foregoing, the court holds the view that, notwithstanding that the court expired by effluxion of time in May, 2022, the plaintiff is not deserving the equitable exercise of this Court’s jurisdiction for she has failed to do equity.
12. Accordingly, I find the application dated 21/11/2023 to be meritorious and I grant the same as prayed and the orders in force are discharged accordingly.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2023.

A. MABEYA, FCI Arb

JUDGE

