



**Nduati v Jamii Bora Bank Ltd & another (Civil Case 105 of 2015)  
[2022] KEHC 12933 (KLR) (Commercial and Tax) (31 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12933 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 105 OF 2015  
A MABEYA, J  
AUGUST 31, 2022**

**BETWEEN**

**JOHN NJUGUNA NDUATI ..... APPLICANT**

**AND**

**JAMII BORA BANK LTD ..... 1<sup>ST</sup> RESPONDENT**

**LEAKEY'S AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before Court is a notice of motion dated 7/07/2021. It was brought pursuant to order 22 of the *Civil Procedure Rules*, section 34 of the *Civil Procedure Act* and the *Land Act*.
2. It sought orders that the unilateral sale of the property known as L.R. No. 209/2310/1 (L.R. NO. 5783) undertaken by the 1<sup>st</sup> defendant on May 13, 2020, the Memorandum and Certificate of Sale thereto be set aside. Further, that the register relating to the said property or any entry of new owners be rectified and amended by deleting those entries and reverting ownership of the property to the applicant.
3. The grounds for the application were set out on the face of it and in the affidavit of John Njuguna Nduati sworn on 7/07/2021. The applicant's case was that, the decree herein dated March 25, 2015 was entered by consent and that the value of the property at the time of the consent had been agreed at Kshs. 120,000,000/=. That the parties entered into a further consent dated 6/07/2018 to sell the suit property jointly after a joint valuation and the consent was adopted as an order of the court.
4. That regardless, the 1<sup>st</sup> defendant unilaterally and without the court's directions or the applicant's consent sold the suit property on May 13, 2020 at an undervalued price of Kshs. 36,000,000/= after a unilateral valuation. That the sale was illegal and left the applicant indebted to the 1<sup>st</sup> defendant as per



- the statement annexed as JNN-4. That the sale was conducted in collusion with the purchasers who ought to have known of these proceedings and were thus not *bona fide* purchasers.
5. The defendants opposed the application vide the replying affidavit of Jackson Kimathi sworn on November 16, 2021. It was admitted that vide a consent judgment of March 25, 2015, it was agreed that the applicant would have a chance to first sell the property by private treaty within 45 days failure to which the 1<sup>st</sup> defendant would be at liberty to exercise its statutory power of sale.
  6. That the applicant did not comply therewith and the 1<sup>st</sup> defendant therefore valued and advertised the suit property for sale in June 2018. That the applicant filed an application for injunction on the basis that the property had been undervalued. The parties then agreed to conduct a joint valuation and recorded a consent on 6/07/2018 that the property be sold based on a joint valuation.
  7. That the applicant failed to appoint or instruct a valuer to work with the 1<sup>st</sup> defendant for a joint valuation. On November 12, 2018, the 1<sup>st</sup> defendant applied for leave to sell the suit property based on its valuation. The applicant again pleaded to appoint another valuer leading to the consent order of June 19, 2021 which replaced the 1<sup>st</sup> defendant's valuer with that of the applicant.
  8. That the applicant again appointed several other valuers but upon contact they informed the 1<sup>st</sup> defendant that they had not agreed with the applicant on the terms of engagement.
  9. When the matter came up for mention on July 31, 2019, the 1<sup>st</sup> defendant informed the court of the applicant's frustrations on the joint valuation and the court granted the applicant 14 days to comply with the consent failing which the default clause would take effect without need of further orders of the court. However, the applicant still failed to comply with those orders.
  10. When the matter came up for mention on October 30, 2019, the applicant informed the court that the applicant did not get a valuer for the joint valuation and that he would await the valuation. The 1<sup>st</sup> defendant then furnished the applicant and the court with the valuation report vide a letter dated 5/11/2019. That thereafter, the 1<sup>st</sup> defendant exercised its statutory power of sale based on that valuation and the auction documents were availed to the applicant's advocate.
  11. That it was therefore misleading and dishonest for the applicant to allege that the sale was done unilaterally. That since the consent judgment was recorded in 2015, the applicant has never paid any money towards clearing the loan. That the prayer to cancel the register was misconceived and could not be granted without granting the new purchasers a chance and right to be heard.
  12. Despite the court directing the parties to file written submissions, none filed. This court has considered the entire record and the parties' contestations.
  13. The applicant's case was that despite the parties entering into a consent that the property was to be sold based on a joint valuation, the 1<sup>st</sup> defendant sold the same unilaterally. The evidence produced by the 1<sup>st</sup> defendant showed that at no one time did the applicant appoint or agree on a valuer to enable the joint valuation to be conducted despite several reminders and pleas from the 1<sup>st</sup> defendant.
  14. When the 1<sup>st</sup> defendant appointed Real Appraisal Limited to conduct the joint valuation vide a letter dated July 24, 2018 as per the consent, the applicant's advocate was notified and the said Real Appraisal Limited was requested to liaise with Amazon Valuers Limited who had been appointed by the applicant and jointly conduct the valuation. Vide an email dated August 14, 2018, Real Appraisal Limited informed the applicant that his valuer had denied being aware of the existence of the request for a joint valuation and the applicant was requested to issue appropriate instructions. However, he failed to do so.



15. On 5/1/2018, three months later from the date of the appointment, the 1<sup>st</sup> defendant requested Real Appraisal Limited to proceed with the valuation as the applicant had failed to instruct his valuer. This was communicated to the applicant vide email dated October 23, 2018.
16. There were subsequent court appearances culminating in the consent of 1/08/2019. This was followed by back and forth correspondence without any firm agreement or commitment by the applicant to the consent entered. On October 15, 2019, the 1<sup>st</sup> defendant informed the applicant that since he appeared disinterested in the joint valuation, it would be proceeding based on its own valuer.
17. On 5/11/2019, the 1<sup>st</sup> defendant furnished the applicant with a copy of the current valuation report dated October 24, 2019 by its valuer and intimated of it's intention to proceed with the sale based on that valuation report.
18. On 6/5/2021, the 1<sup>st</sup> defendant once again furnished the applicant with the valuation report, memorandum of sale, transfer deed and statement of loan account in line with the court's directions of February 24, 2021. It is at that point that the applicant filed the present application.
19. From the series of events narrated above, it is clear that there was no intention whatsoever on the part of the applicant to comply with the consent judgment, leave alone the subsequent consents. The court is satisfied that the applicant was hell bent to frustrate all efforts for a joint valuation and sale of the property.
20. The 1<sup>st</sup> defendant demonstrated patience and maintained communication at all times. The consequent sale was not done in secret. From the evidence on record, the sale was procedural and above board.
21. Although the applicant alleged that the sale was at an undervalue, he did not produce any valuation for comparison with that of the 1<sup>st</sup> defendant.
22. Further, it was alleged that the sale was done in collusion with the purchasers. There was no evidence of collusion. In any event, the purchasers were not served with the allegations for them to answer thereto.
23. Accordingly, the application dated 7/07/2022 is found to be unmeritorious and is hereby dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF AUGUST, 2022.**

**A. MABEYA, FCIArb**

**JUDGE**

