



**Ratemo v Barclays Bank of Kenya Limited & another (Environment & Land
Case E20 of 2023) [2023] KEELC 17442 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E20 OF 2023
FM NJOROGE, J
MAY 16, 2023**

BETWEEN

BENSON ONSARE RATEMO PLAINTIFF

AND

BARCLAYS BANK OF KENYA LIMITED 1ST DEFENDANT

LEGACY AUCTIONEERING SERVICES 2ND DEFENDANT

RULING

1. The plaintiff brought an application dated March 10, 2023 seeking at prayer 3 an injunction to restrain the 1st defendant or its agents from interfering with the property known as Nakuru Municipality Block 5/528 either by way of sale by private treaty, transfer or disposal by any means whatsoever.
2. The grounds upon which the application was brought are that the 1st respondent instructed the 2nd respondent to issue a notification of sale and thereafter advertised and sold the property; that the notification was issued on February 21, 2023; that the intended sale is slated for May 3, 2023. However, the notification was not served on the applicant on time and he learned of it on March 9, 2023 from his mother; that the applicant was not apprised of the purported default, has not been availed statements of account on time and could not know of his indebtedness owing to deliberate concealment on the 1st respondent's part and that it would be prejudicial if the orders sought are not granted. It stated at all material times the 1st respondent should have updated the applicant and that by sending the notification of sale to a different address other than the one where the applicant resides, that was evidence of bad faith and an intention to keep the applicant in the dark and deny him a chance to redeem his property. It is also stated that the 1st respondent did not exercise his duty of care and failed to exhaust all remedies under the charge document before proceeding to take precipitated action; consequently, the intended auction is illegal and irregular and should be invalidated. The application is supported by an affidavit of the applicant sworn on March 10, 2023 which reiterates the grounds analyzed above.



3. In the 1st respondent's replying affidavit sworn by one Samuel Njuguna, the 1st respondent's Legal Officer, it stated that by virtue of a charge, a further charge, a second further charge and a 3rd further charge executed on various dates between July 18, 2013 and December 7, 2021, between it and the applicant financial facilities and accommodation for an aggregate principal of Kshs 10,227,510.00/= were accorded to the applicant and the suit property would secure payments to the bank of such sums as would be owed by the applicant on the current account or other accounts; that in default the bank would exercise its right under the Land Act to sell the property and realize the sum due. The respondent further stated that the applicant had been making irregular loan payments towards the various loans until March 2022 when the arrears stood at Kshs 10,359,242.20/=. In February 2023 a redemption notice was issued while the outstanding amount stood at Kshs 9,066,564.40/=; that by charging the property the applicant granted the bank an automatic right to sell the suit property should he ever default in his obligations in the charge; that the requisite 90 days statutory notice had been served upon the applicant via electronic mail on March 18, 2022 and acknowledged by him; that on June 27, 2022 a 40 days notification of sale was issued by the bank's advocates whose receipt the applicant also acknowledged; that on February 21, 2023 a 45 days redemption notice was issued; that only when the property was advertised in the newspaper and an auction scheduled did the applicant rush to court for injunctive reliefs,
4. The respondent dismissed the applicant's excuse of not receiving default updates as inconsequential in the light of the evidence tabled by the bank. It stated that the applicant was at all times aware of his obligations; that the statement of account clearly demonstrates default and lack of commitment on his part; that upon default the 1st respondent's rights crystalized and the suit property was available for disposal on default. Finally, it stated that the applicant had admitted to being indebted to it and an injunction cannot issue since the applicant had failed to demonstrate that he has an arguable case and he has unclean hands, having failed to present a concrete proposal for the redemption of the suit property.
5. It was urged that the applicant has also not demonstrated he would suffer irreparable injury that cannot be compensated by way of monetary compensation and that in any event, the 1st respondent is a financial institution capable of compensating him for any loss, if any, arising from the exercise of its right.
6. Only the respondent filed submissions on the application in accordance with the orders made in this court. A temporary injunction was allowed by consent when the parties appeared on March 27, 2023. Having perused the file record and found no submissions filed on behalf of the applicant as ordered on March 27, 2023 and there having been no directions by this court for the application to be disposed of by any other manner save by way of written submissions, I find that by failing to file submissions the applicant has failed to prosecute his application as required. Consequently, the injunctive orders issued on March 27, 2023 are vacated and the application dated March 10, 2023 is hereby dismissed for want of prosecution.
7. This matter will be mentioned on May 31, 2023 for further directions.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 16TH DAY OF MAY, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

