



REPUBLIC OF KENYA



**Mumbu Holdings Limited v Credit Bank Limited & 3 others (Commercial Case E727 of 2021)  
[2022] KEHC 15986 (KLR) (Commercial and Tax) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15986 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E727 OF 2021  
A MABEYA, J  
NOVEMBER 25, 2022**

**BETWEEN**

**MUMBU HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**CREDIT BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SKYTOP TECHNOLOGY LTD ..... 2<sup>ND</sup> DEFENDANT**

**KIMANI MICHUKI & CO ADVOCATE ..... 3<sup>RD</sup> DEFENDANT**

**GEOFFREY WEKESA ADV. .... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Before court is an application dated August 3, 2021. It was brought under articles 40, 159 (2) (b) of the *Constitution* 2010, order 40 of the *Civil Procedure Rules, 2010*, and sections 1A, 1B and 3A of the *Civil Procedure Act*.
2. The application sought injunctive orders to restrain the 1<sup>st</sup> respondent from advertising, selling, leasing, transferring, alienating, disposing of or in any way interfering with the property known as LR No 209/8336/66 (“the suit property”) pending the hearing of the suit, or in the alternative, the status quo be maintained pending the determination of the suit.
3. The grounds for the application were set out on the face of the motion and on the supporting affidavit of Duncan Okatch sworn on August 3, 2021. It was contended that on July 15, 2021, the 1<sup>st</sup> respondent sent Reagent Auctioneers to value the suit property for a sale by auction scheduled for September 30, 2021. The advertisement was scheduled for September 13, 2021.



4. That the applicant had written to the 1<sup>st</sup> respondent enquiring how the property had been charged for a loan facility of kshs 80 million advanced to the 2<sup>nd</sup> respondent. Before the information was given, the 1<sup>st</sup> respondent issued the 45 days redemption notice and notification of sale of the suit property.
5. Upon interrogation of the loan offer, charge, personal guarantee and indemnity and the board resolution, the applicant realized several procedural flaws in the way a loan of kshs 20 million was advanced to one Mr John Mbuu and the suit property charged.
6. That the personal guarantee did not indicate the name of the personal guarantor but was signed. The board resolution dated May 24, 2018, allegedly issued by the applicant, did not indicate who attended the meeting. The 1<sup>st</sup> respondent did not procure all necessary authentic documents under the terms of the loan offer. Further, the letter of application for the loan was not signed by John K Mbuu but received by the 1<sup>st</sup> respondent.
7. It was also contended that the 1<sup>st</sup> respondent did not conduct due diligence before disbursing the loan. It did not find out that the applicant had four other directors and could only take out a loan for its benefit as per its Memorandum and Articles of Association.
8. It was also alleged that the applicant did not at any time hold an account with the 1<sup>st</sup> respondent. That the quorum required to pass a resolution for the applicant was three directors yet only one had signed the charge document. The signature on the security documents was also challenged.
9. The 1<sup>st</sup> respondent opposed the application vide the Replying Affidavit of Wainaina Francis Ngaruiya sworn on January 31, 2021. It was averred that the loan facility of kshs 20 million was granted to the applicant's director John Kariuki Mbuu. The security thereof was his personal guarantee of kshs 20 million, the applicant's corporate guarantee of kshs 20 million, legal charge over the suit property and corporate guarantee of Mbukabu of kshs 20 million. That the facility was granted to the applicant's director on account of the security offered by the applicant including the charge on the suit property.
10. That the loan was now in arrears and all necessary notices had been issued and a valuation of the property undertaken. That the applicant was at all times aware of the loan facility as evidenced by the loan documents including the loan application and resolution. That the applicant's directors were members of the same family and were having internal wrangles.
11. That the applicant's tactics have been employed in other court cases with different financiers such as in HCCOM E/336/2020 *Mumbu Holdings vs Spire Bank Limited & 5 others*. That the applicant was denied orders therein and an appeal against the ruling was also dismissed. That the applicant again filed ELC no E175 of 2021 seeking the same prayers but the same was dismissed for being *res judicata*.
12. That the applicant had also filed HCCC No E800 of 2021 Mumbu Holdings Limited vs Credit Bank Limited & 5 Others involving the same parties and was awaiting a ruling. The application therein was annexed as WFN-15. That the current suit was therefore prejudicial.
13. That the applicant undertook due diligence in the process of granting the loan facility and perfecting the charge over the suit property. The allegation that the applicant was not an account holder with the 1<sup>st</sup> respondent did not invalidate the credit facility and the legal charge. That the allegation of quorum was baseless as the applicant offered the property without any fraud or illegality and that granting of the orders would be prejudicial to the 1<sup>st</sup> respondent.
14. The 3<sup>rd</sup> and 4<sup>th</sup> respondent opposed the application vide the replying affidavit of Geoffrey Wekesa sworn on February 11, 2022. They fully associated themselves with the averments made by the 1<sup>st</sup> respondent.



15. The application was canvassed by way of written submissions. The respondents' submissions were dated April 20, 2022. No other submissions were on the court record at the time of writing this ruling.
16. This is an injunction application. The principles applicable were settled in the case of *Giella vs Cassman Brown & Company Limited* (1973) E A 358. These are that an applicant must show a *prima facie* case with a probability of success. Secondly, that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Finally, if the court is in doubt, it will decide an application on the balance of convenience.
17. On whether the applicant established a *prima facie* case with probability of success, the applicant has premised his case on the allegation that the 1<sup>st</sup> respondent did not conduct due diligence before granting the loan of kshs 20 million to its director. That the 1<sup>st</sup> respondent overlooked the fact that the applicant had other directors that were not involved in the process of the loan application and creation of a charge over the suit property. It was also alleged that the resolution allegedly passed to approve the loan application did not indicate who was present at that meeting and that the personal guarantor was not named but was signed.
18. This court has seen the documents that were produced by the applicant. It was established that the applicant had other directors who did not participate in the loan application process. From a quick analysis of the loan documents, doubt is raised as to whether the applicant resolved that the suit property be used to secure a personal loan taken out by one of its directors.
19. However, this is not an issue that can be determined preliminarily. It needs to be tried at a full hearing so that the legality of the loan application and charge can be determined.
20. Though the 1<sup>st</sup> respondent contended that a similar suit was before another court in HCCC No E800 of 2021 Mumbu Holdings Limited vs Credit Bank Limited & 5 Others, this court could not trace the application in the 1<sup>st</sup> respondent's attachment. In the premises, it was difficult to determine whether the present suit and application are *sub-judice*.
21. This court also notes that the 1<sup>st</sup> respondent did not dispute the fact that the applicant had other directors. It further failed to establish the legality and authenticity of the alleged resolution of the applicant. The fact of the directors being related has nothing to do with the personality and independence of the applicant as a legal person from its directors.
22. This court finds that the applicant has established a *prima facie* case with a probability of success. The application raises triable issues which require judicial consideration. The purpose of injunction orders is to preserve the subject matter of a dispute pending resolution.
23. The applicant would suffer irreparable harm if its property was to be sold at this point without determining the legality of the charge which is alleged to have been created without its approval or knowledge. Consequently, the balance of convenience tilts towards preserving the status quo.
24. Accordingly, the court finds merit in the application dated August 3, 2021 and allows the same as prayed with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**A MABEYA, FCIArb**

**JUDGE**

