



REPUBLIC OF KENYA



Jaswant Singh and Brothers Limited v Standard Chartered Bank (K) Ltd & another (Civil Case 411 of 2018) [2022] KEHC 16037 (KLR) (Commercial and Tax) (24 November 2022) (Ruling)

Neutral citation: [2022] KEHC 16037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 411 OF 2018
WA OKWANY, J
NOVEMBER 24, 2022**

BETWEEN

JASWANT SINGH AND BROTHERS LIMITED APPLICANT

AND

STANDARD CHARTERED BANK (K) LTD 1ST RESPONDENT

GARAM AUCTIONEERS 2ND RESPONDENT

RULING

1. The 1st defendant granted banking facilities to the plaintiff on the security of charge over the plaintiff's suit property known as title number Nairobi /block 72/947.
2. The plaintiff did not comply with the terms of the lending agreement and defaulted in the repayments. Consequently, the 1st defendant instructed its advocates on record to proceed with the realization of the security.
3. The plaintiff moved this court through the application dated March 8, 2018 seeking orders of injunction to restrain the 1st defendant from selling the suit property. No interim injunctive orders were issued and the said application was scheduled to be heard on July 12, 2018.
4. The 1st defendant, through its advocates on record, notified the plaintiff of their intention re-advertise the suit property for sale if they did not clear the outstanding arrears. The suit property was advertised for sale, public auction, in the Daily Nation Newspaper of April 23, 2018 and in response to the advert, the plaintiff filed the application dated April 26, 2018 seeking restraining orders against the plaintiff.
5. On May 3, 2018, the plaintiff obtained *ex-parte* orders stopping the sale of the suit property scheduled to take place on May 8, 2018 but on condition that the applicant pays the admitted sum of Kshs. 1,270,000/- by close of business of May 7, 2018.



6. The plaintiff did not comply with the terms of the order and the suit property was sold via auction on April 23, 2019 as shown in the memorandum of sale marked as annexure “HS1” to the plaintiff’s supplementary affidavit sworn on the July 14, 2020.
7. This ruling is in respect to the application dated March 8, 2018.

Application.

8. As I have already stated at the introduction section of this ruling, the applicant/plaintiff herein sought orders of temporary injunction to restrain the respondents herein from advertising, alienating, selling and/or in any other way disposing of land parcel No. Nairobi/Block 72/947 (“the suit property”) pending hearing and determination of the main suit.
9. The application is supported by the affidavit of the applicant’s director Mr. Hardev Singh Juttla and is premised on the grounds that:-
 - a. The plaintiff is the owner of the suit property that is Nairobi/Block 72/947 which it provided as security for a loan of Kshs 8,500,000/- granted to it by the 1st defendant which loan the plaintiff has faithfully been repaying and has almost completed repayment, having paid more than 9,514,000/- for both the principal and the interests.
 - b. The plaintiff was served by the 2nd defendant with a 45 day redemption notice on January 30, 2018 for its property that is Nairobi/Block 72/947 and the house thereon to be due for sale immediately upon expiry of that period.
 - c. The said redemption notice is misplaced, unfair and erroneous as it purports to result from the failure by the plaintiff to pay a loan amount of Kshs 9,110,238.63/- to the 1st defendant which amount is not owed by the plaintiff to the defendant.
 - d. Unless this application and the suit is heard on a priority basis and interim orders issued by this honourable court at this stage stopping the intended sale of the suit land, this suit will be rendered moot and the plaintiff shall suffer irreparable loss and damage.
 - e. Nothing short of this honourable court’s injunctive orders shall protect the plaintiff from the impending illegal alienation of its land by the defendants.
 - f. The ingredients for issuance of an injunction as set by law exist in the circumstances of this case.
10. The 1st respondent opposed the application through the replying affidavit of its legal manager, collections and recoveries division Ms Juliana Ogando who averred that the 1st defendant was justified in exercising its statutory power of sale as the plaintiff had defaulted in making its loan repayments.
11. Parties canvassed the application by way of written submissions which I have considered.
12. The main issue for determination is whether the applicant is entitled to the equitable relief of injunction.
13. The following facts were not disputed:-
 - a. That the 1st defendant advanced a loan facility to the plaintiff who offered the suit property as collateral.
 - b. That the plaintiff defaulted in the loan repayments thus triggering the 1st defendant’s move to exercise its statutory power of sale.



- c. That following the filing of this suit and application, the court (Okong'o J) on May 2, 2018 granted the applicant a reprieve by ordering the defendants to stop the auction of the suit property scheduled for May 8, 2018 but on condition that the plaintiff pays the 1st defendant the sum of Kshs 1,270,000 by close of business on May 7, 2018.
 - d. That the plaintiff did not comply with the terms of the said order of May 2, 2018.
 - e. That on April 23, 2019, the suit property was sold by public auction.
14. From the above narration of the sequence of events that occurred after the filing of the instant application, it is clear that the suit property that is the subject of the instant application has already been sold by public auction. The memorandum of sale was attached to the plaintiff's further affidavit dated July 4, 2020 as annexure 'HS1'. My finding is that the application dated March 8, 2018 has been overtaken by events following the sale of the suit property. This is to say that, in the circumstances of this case, the remedy of injunction to restrain the respondents from selling the suit property is no longer available to the plaintiff.
15. For the above reasons I find that the application dated March 8, 2018 is not merited and I therefore dismiss it with costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF NOVEMBER 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Muriithi for respondents

Mr. Musyoka for Kihara for plaintiff

Court Assistant- Sylvia

