

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

COMMERCIAL CASE NO. 56 OF 2020

BETWEEN

BENCHMARK MANAGEMENT LIMITED.....PLAINTIFF/APPLICANT

AND

STANBIC BANK KENYA LIMITED.....1ST DEFENDANT/RESPONDENT

KEYSIAN AUCTIONEERS.....2ND DEFENDANT/RESPONDENT

RULING

1. By a Motion on Notice dated 7/10/2020 brought under *Order 51 Rule 1 of the Civil Procedure Rules, sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Cap 21 Laws of Kenya*, the applicant sought an injunction to restrain the respondents and/or their agents/servants/employees from entering, trespassing, transferring and/or in any way whatsoever dealing with Apartment No. A, Kita Gardens Apartments erected on **LR. No. 209/3221 Kileleshwa**, Nairobi (“the suit property”).
2. The Motion was supported by the affidavits of **Ben R. N. Mbai**, the Director of the applicant sworn on 7/10/2020 and 30/11/2020, respectively. The applicant’s contention was that it is the registered owner of the suit property. That on 30/9/2020, the 2nd respondent, on the instructions of the 1st respondent, purported to sell by public auction the suit property.
3. Before considering this Motion, I note that a third party is involved in this matter who is not party to these proceedings. This is borne by the averment in **paragraph 22** of the replying affidavit of **Elisha Nyikuli** sworn on 13/11/2020, wherein she avers that the suit property was sold on 30/9/2020.
4. I note from the aforesaid averment that the particulars of the purchaser of the suit property and the purchase price were not disclosed. There is already an allegation of under valuation of the property.
5. Before the Court can consider the matter and make any orders that may adversely affect a 3rd party who is not a party to the proceedings, I direct that the purchaser of the property be enjoined in this suit within 14 days. It is only after his/her joinder that the matter can be effectively dealt with.
6. Accordingly, the interim orders in force will continue to subsist until further orders of the Court.
7. Since the particulars of the purchaser are only known to the bank, let the bank make the requisite application to join him or her within the stipulated period. The matter will be mentioned after 30 days of this ruling.

It is so ordered.

DATED and DELIVERED at Nairobi this 20th day of January, 2021.

A. MABEYA, FCIArb

JUDGE