



IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 6 OF 2019

BETWEEN

MANGUO DEVELOPMENT COMPANY LIMITED.....1ST PLAINTIFF

CHARLES KARANJA KAHAHU.....2ND PLAINTIFF

ANNE WAIRIMU WANYEKI.....3RD PLAINTIFF

DAVID KABUBII KURIA.....4TH PLAINTIFF

SHADRACK THUKU KURIA..... 5TH PLAINTIFF

ELIZABETH WAMBUI KURIA..... 6TH PLAINTIFF

PINNACLE PROJECTS LIMITED..... 7TH PLAINTIFF

WINLOUKE PROPERTIES LIMITED.....8TH PLAINTIFF

AND

I & M BANK LIMITED.....1ST DEFENDANT

WESTMINISTER COMMERCIAL AUCTIONEERS.....2ND DEFENDANT

RULING

1. The question I have to decide today 27th February 2020 is whether to restrain the 1st defendant from selling the suit property pursuant to the exercise of its statutory power of sale. According to the plaint, four prayers are sought in relation to the suit property. Prayers (a) and (b) are in respect of a sale that was due in November 2018 and relates to a notification of sale dated 1st November 2018 which has now been overtaken by events. The only viable order is that in prayer (c) seeking full accounts.

2. The Notices of Motion dated 19th January 2019, 5th February 2020 and 8th February 2020 are all in respect of a new sale that is not the subject of the plaint hence there cannot be a prima facie case with a probability of success in respect of the sale scheduled tomorrow, 28th February 2020. In the circumstances, the said applications are dismissed with costs.

DATED and DELIVERED at NAIROBI this 27th day of FEBRUARY 2020.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.