



**Ram Equity Limited v Mayfair CIB Bank Limited & another (Environment & Land Case E107 of 2023) [2023] KEELC 20062 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20062 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E107 OF 2023  
EK WABWOTO, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**RAM EQUITY LIMITED ..... PLAINTIFF**

**AND**

**MAYFAIR CIB BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect the Plaintiff's application dated March 16, 2023 and the Defendants preliminary objection dated April 18, 2023. The Plaintiff filed a Notice of Motion application dated March 16, 2023 seeking the following orders;
  - i. ...spent...
  - ii. That pending the hearing and determination of this Application, a temporary injunction do issue to restrain the 1<sup>st</sup> Respondent, its respective agents, servants, employees, assigns and/or personal representatives from forfeiting the 10% of the purchase price amounting to Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-) paid by the Applicant.
  - iii. That pending the hearing and determination of this suit, a temporary injunction do issue to restrain the 1<sup>st</sup> Respondent, its respective agents, servants, employees, assigns and/or personal representatives from forfeiting the 10% of the purchase price amounting to Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-) paid by the Applicant.
  - iv. That pending the hearing and determination of this suit, injunctive orders do issue ordering the Respondent to deposit the 10% of the Purchase price amounting to Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-) in a joint interest earning account in the names of the parties' advocates



- v. That in the alternative and without prejudice to prayer (4) above, pending the hearing and determination of this Application, this Honourable Court be pleased to order and/or direct the maintenance of status quo in terms of the forfeiture of the 10% deposit of Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-)
  - vi. That in the alternative and without prejudice to prayer (4) above, pending the hearing and determination of this suit, this Honourable Court be pleased to order and/or direct maintenance of status quo in terms of the forfeiture of the 10% deposit of Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-).
  - vii. Costs of this Application be provided for.
2. The application was supported by an affidavit sworn by Bhavin Gudka and was premised on the following grounds:
- i. On December 20, 2022, under the 1<sup>st</sup> Defendant's instructions, Garam Investments Auctioneers publicly auctioned the property.
  - ii. The Applicant attended the auction and issued a banker's cheque totalling the sum of Kenya Shillings Five Million (5,000,000/-).
  - iii. During the said auction, the Applicant emerged the highest bidder at a sum of Kenya Shillings Eighty-Six Million (86,000,000/-)
  - iv. The Applicant paid a 10% deposit on the purchase price of Kenya Shillings Eight Million Six Hundred Thousand (8,600,000/-)
  - v. As is practise for any other conveyancing transaction, the Applicant embarked on conducting due diligence over the property.
  - vi. The Applicant noticed a number of irregularities with the title documents issued by the Respondent.
  - vii. The Applicant conducted further due diligence at the Lands Registry and established that the title documents in regards to the property are fraudulent.
  - viii. The 1<sup>st</sup> Respondent has not sufficiently explained or proved the regularity of the title documents it intends to transfer to the Applicant only seeking to enforce the sale without addressing the concerns raised by the Applicant.
  - ix. The Applicant has rescinded the contract with the 1<sup>st</sup> Respondent as there is no indefeasible interest to transfer to it in exchange for the consideration. The 1<sup>st</sup> Respondent has adamantly refused to refund the 10% deposit to the Applicant's detriment.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a notice of preliminary objection dated 18<sup>th</sup> April 2023 seeking the suit be struck out with costs. The preliminary objection was raised on the following grounds:
- a. This Honourable Court lacks the jurisdiction to take cognizance of, hear and determine the application and the entire suit filed herein as they disclose a purely commercial dispute that ought to be heard and determined by the High Court
  - b. The application and the entire suit have been filed contrary to the express provisions of Section 13(1) and (2) of the *Environment and Land Court Act*



- c. The application and the entire suit are an abuse of the court process and it is only fair, just and proper that the court strikes them out.
4. Pursuant to the directions issued by this court on April 26, 2023, it was directed that the application and the preliminary objection be heard by way of written submissions.
5. The Plaintiff filed submissions dated June 29, 2023 and a replying affidavit dated May 2, 2023 where it was submitted that the Court should be guided by the pre-dominant purpose test set out in the case of *Suzanne Butler & 4 others v Redhill Investments & another* (2017) eKLR. On this premise, the Applicant outlined that the suit relates to the title of the suit property which was well within the jurisdiction of the Court. It was averred that the suit related to the validity of the sale agreement, the respondent's title documents and Plaintiff's right to rescind the said agreement. It was further submitted that Respondent had misconstrued the judgement in the Cooperative Bank case since the circumstances in this case did not relate to mortgages, charges or collection of dues or rents. The Applicant also highlighted that the nature of its prayers were permanent preservation orders, general damages and costs which similarly fell within the jurisdiction of the Court.
6. On the other hand, the Defendants filed submissions dated May 10, 2023 in which it was reiterated that the prayers sought was sufficient proof that the suit involved a commercial matter that could only be heard and determined by the High Court. Relying on the cases of *Co-operative Bank of Kenya Limited vs. Patrick Kangethe Njuguna & 5 others* [2017] eKLR and *Thomas Mutuku Kasue v Housing Finance Company Limited (HFC) & Another* [2021] eKLR, it was submitted that the jurisdiction of this Court was limited to Article 162 of the *Constitution*, Section 13 of the *ELC Act* and Section 150 of the *Land Act*, therefore, the questions of refund of money paid in the instant suit could not be handled by this Court.
7. I have considered the application and the preliminary objection together with written submissions filed and, in my view, the issues that arise for determination are:
- i. Whether the Court has jurisdiction to hear and determine the matter?
  - ii. Whether the Plaintiffs have met the threshold to be granted the interim injunction orders?
  - iii. Who should bear cost of the applications?
8. With regards to the issue of jurisdiction, it is now a well-founded principle that jurisdiction is the foundation upon which every suit is built upon. The Supreme Court in the case of *Samuel Kamau Macharia v Kenya Commercial Bank & 2 Others*, Civil Appl. No 2 of 2011, observed that:
- “A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”
9. Articles 162 of the *Constitution of Kenya* established courts of equal status with the High Court and the subordinate courts respectively: -
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-
    - (a) employment and labour relations; and



- (b) the environment and the use and occupation of, and title to land.
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).
10. Section 13(1) and 13(2) of the *Environment and Land Court Act* (ELC Act) states:
- “The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.”
11. Additionally, this Court is guided by the Section 150 of the *Land Act* and Section 36 and 101 of the *Land Registration Act* which both outline disposition of land through charges and the Court’s jurisdiction in such dealings.
12. For the *Land Act*, Section 150 provides as follows: -
- “The Environment and Land Court established in the *Environment and Land Court Act* and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”
13. For the *Land Registration Act*, Section 36 outlines:
- “...A lease, charge or interest in land shall not be disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law...”
14. The jurisdiction provision under Section 101 which provides as follows:-
- “The Environment and Land Court established by the *Environment and Land Court Act, 2011* (No 19 of 2011) and subordinate courts have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”



15. I echo the sentiments of Gacheru J in *Peter Kiama Maina vs Industrial Commercial Development Corporation & another*, ELC Case No 11 of 2020 while reiterating the position in *Alphose Yankulije vs One Twig Road Limited & 2 others* [2019] eKLR:

“The *Land Act* and *Land Registration Act* also provide for the jurisdiction of the Environment & Land Court, as the two Acts address the land transactions and dispositions of land. The process through which a chargee can exercise its statutory power of sale is found in the said Acts, and therefore the jurisdiction of the Environment and Land Court (ELC) in dealing with the same is justified.”

16. In a similar case of *Lydia Mbugua vs Diamond Trust Bank Kenya Limited & another*, Elc No 296 of 2013; S. Munyao J held as follows

“...It is the ELC and the empowered subordinate courts which have jurisdiction to hear disputes relating to matters in the *Land Act* and *Land Registration Act*. This jurisdiction will inevitably cover all instruments created within these statutes, which must also encompass charges, and generally all proprietary transaction.

Let me reiterate again, that the process of sale of a charged property is governed by the *Land Act* and *Land Registration Act*, and these statutes provide that it is the ELC and empowered subordinate courts which have jurisdiction...

...I do not think that the Court of Appeal was holding the position that once the Environment & Land Court (ELC) sees the word “charge” mentioned in any pleadings, then the ELC should down its tools, for if that were the case, this would conflict with what the *Constitution* under Article 162 (2) (b), and parliament under Section 13 of the *Environment and Land Court Act* No19 of 2011, have prescribed as being the jurisdiction of the ELC....”

17. In the foregoing, my interpretation of the Court of Appeal case of *Cooperative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others* [2017] eKLR, is that the High Court’s jurisdiction is triggered only where accounting issues have been raised in connection to the disposition of land vide a charge. In this instance, I have considered that the events leading to the auction and post-auction actions are rooted in ownership of land and validity of consequent land sale agreements. In view of the foregoing, I therefore find that the suit fall squarely within the jurisdiction of this Court.

18. With regards to the issue of granting of injunctive orders, this Court applies the threshold laid out in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others*, CA No 77 Of 2012;

“In an interlocutory injunction application, the applicant has to satisfy the three requirements to;

- (a) Establish his case only at a *prima facie* level,
- (b) Demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour”

19. It is undisputed by the parties that the sum of Kshs 8,600,000 was paid by the Applicant as 10% deposit following the auction. It is evidently clear that should forfeiture be effected, the Applicant would suffer financial loss. Consequently, having arrived at the conclusion that this Court has jurisdiction and that the Applicant has established his case on a *prima facie* level, I hereby make the following orders:



- i. The Preliminary objection dated April 18, 2023 is unmerited and is hereby dismissed.
- ii. That pending the hearing and determination of this suit, orders are hereby issued directing the Respondent to deposit the 10% of the Purchase price amounting to Kenyan Shillings Eight Million Six Hundred Thousand (8,600,000/-) in a joint interest earning account in the names of the parties' advocates within 14 days from today.
- iii. Costs will abide the determination of the suit.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

N/A for the Plaintiff/Applicant.

Ms. Mutimba h/b Ms. Abobo for the and 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondent.

