

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 44 OF 2017

LONGONOT GATE DEVELOPMENT.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

RULING

Having heard counsels for the Applicant and the Respondent with respect to the Application dated 27/8/2018 and having read the Ruling of the court dated 23/7/2018 as well as all the documents filed in the matter, I observe the following

1. The court, in its ruling found that the Bank had not discharged its burden to demonstrate that Statutory Notice had been served on the Applicant.
2. The court gave a conditional grant of injunction the condition being the payment of Ksh 31,691,913.43 which the court found the Applicant facility admitted to owing.

The conditional payment of the sum is the main issue before this court and on appeal before the Court of Appeal. The issue as I understand it is the apprehension that the Bank has been given a licence to realize the securities following failure to pay the Ksh 31,691,913.43 even before a statutory notice has been served to the applicant.

It is readily obvious that such sale would run afoul of the statutory scheme. It seems to me therefore that the proper resolution of the issue before me is one that would allow the Applicant to preserve its appeal if it so wishes without suffering the illegality of having its property sold without following the statutory scheme.

Consequently, I direct as follows

1. Following the failure of the Applicant to abide by the conditions placed on the grant of injunction by the court, the bank Respondent will be at liberty to serve a statutory power of sale in accordance with the law. To clarify the extent court orders do not constrain the Bank Respondent from following the statutory scheme provided in the law to realize its security.
2. For avoidance of doubt the court having established that there was no demonstration that a statutory notice had been served. The Bank Respondent cannot realize its security without serving new statutory notice and following the statutory timelines afresh.

Dated and delivered in Nakuru this 24th day of October, 2018

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JOEL NGUGI

JUDGE