



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 140 OF 2015

DR. JOSEPH ARAP NGOK ::::::::::::::::::::::::::::::::::::::: 1ST APPLICANT

LIVINGSTONE KIPNGETICH RONO ::::::::::::::::::::::::::::::::::::::: 2ND APPLICANT

- VERSUS -

ECOBANK formerly known as

EABS BANK LIMITED ::::::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

1. By an application dated 19th March 2015, the Plaintiff herein came to court seeking injunctive orders against the defendant especially an injunction stopping the sale of the suit property scheduled on 24th March 2015 by public auction.
2. The Applicant, however, failed to secure interim injunction orders as the court certified the matter urgent and directed that the application be served and heard inter partes on 223rd March 2015, a day before the scheduled public auction on 24th March 2015.
3. On 23rd March 2015 when the matter came for hearing inter partes, the defendant who had filed a Preliminary Objection stating that the suit was resjudicata, persuaded the court after the hearing, that no interim orders were merited, and so the court did not issue any interim injunctive orders, but directed that the matter be mentioned on 15th April 2015.
4. On the following day, the 24th March 2015, the said public auction was staged where the suit property was sold.
5. On 15th April, 2014 when the matter came up for mention as was directed, both parties informed the court that the scheduled public auction did in fact take place on 24th March 2015, and that the current application and the suit had been overtaken by events. The parties were of the view, that writing a ruling on the said application would be an exercise in futility. The purpose of this particular ruling was then to inform the parties whether or not the court would be writing a ruling.
6. After careful consideration of the facts and activities which have taken place since this matter was filed in court, and especially after the sale of the suit property in public auction on 24th March 2015; it is also my conviction that there is no longer any need to write a ruling on the application dated 19th March 2015,

as doing the same would amount to an exercise in futility. In that regard, this court make the following orders:

(a) There will be no need to write a Ruling on the application dated 19th March 2015.

(b) The Plaintiffs shall, within 10 days from the date of this ruling indicate to the court whether they are still interested in other prayers in the suit.

(c) Costs of the Plaintiff's application dated 19th March 2015 shall be paid to the defendants by the Plaintiff.

Orders accordingly.

DATED, READ AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2015

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for the Plaintiff

Mr. Mwangi for the Defendant

Teresia – Court Clerk