



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 161 OF 2014**

**AL-JALAL ENTERPRISES LIMITED :::::::::: PLAINTIFF/APPLICANT**

**VERSUS**

**GULF AFRICAN BANK LIMITED :::::::::: DEFENDANT/RESPONDENT**

**R U L I N G**

1. The **Notice of Motion** application before the court is dated and filed in court on **13th May 2015** by the Defendant pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 51, Rule 1 of the Civil Procedure Rules. The application seeks to secure the following orders:-
  1. *The application be certified urgent and be heard ex-parte in the first instance.*
  2. *An order do issue, specifically declaring that the injunction granted in the order made on the 17th October 2014 is hereby lifted and discharged.*
  3. *Costs.*
2. The application is premised on the following grounds:-
  1. *On the 17th of October 2014 the court granted an injunction in favour of the Plaintiffs.*
  2. *The injunction was granted on certain conditions that were imposed on the Plaintiff.*
  3. *It was a term of the order that if the Plaintiff breached any of the conditions of the injunction, the Defendant would be at liberty to sell the suit property.*
  4. *The Plaintiff breached all the conditions of the said order.*
  5. *Consequently the Defendant sold, by public auction, the suit properties on the 28th of April 2014 to Mega Wholesalers Limited.*
  6. *The Plaintiff has severally admitted that it failed to meet the aforesaid conditions attached to the orders of 17th of October 2014 in particular on ground number 3 of the application of the application filed on the 22nd of April 2015.*
  7. *The order of 17th of October 2014 was extracted and registered against the title of the suit property.*
  8. *The purchaser has been unable to register the transfer executed in its favour without an order being specifically issued expressing that the injunction in the order of 17th of October 2014 has been lifted and discharged.*
3. The application is supported by affidavit of **Paul Ogunde** sworn on **13th May 2015** which expounds on the above grounds.
4. The application was served upon the Respondent and there is an affidavit of service filed in court

- on 15th May 2015. However, there is no response by the Respondent.
5. I have considered the application. It is true that on 17th of October 2014 this court granted conditional injunction to the Respondent. Any failure by the Respondent to meet the said conditions automatically entitled the Applicant to sell the suit premises. The Respondent did not meet the said conditions so the Applicant sold the suit premises on 28th April 2014 vide public auction. However, the order of 17th of October 2014 was extracted and registered against the title of the suit property. This application seeks orders lifting that encumbrance.
  6. I am satisfied that the application is merited. I allow it in the following terms:-
    - a. ***The injunction granted in the order made on the 17th of October 2014 is hereby lifted and discharged.***
    - b. ***Costs shall be for the Applicant.***

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI**

**THIS 22ND DAY OF MAY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

No appearance for the Plaintiff/Applicant

Mr. Ogunde for the Defendant/Respondent

Teresia – Court Clerk