



**Equity Bank (Kenya) Limited v Souring & Construction Industries  
Company Limited (Environmental and Land Originating Summons  
E013 of 2024) [2025] KEELC 3365 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3365 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024**

**EK MAKORI, J**

**APRIL 24, 2025**

**JUDGMENT**

**IN THE MATTER OF PARCEL OF LAND KNOWN AS VOLUME LT 36 FOLIO  
140 FILE 4583 PORTION NUMBER 2334 (ORIGINAL NO.1935/206) MALINDI**

**AND**

**IN THE MATTER OF SECTIONS 90(1)(2)(3)(E),96,97,  
98, 104(1) OF THE LAND ACT NO.6 OF 2012**

**AND**

**ORDER 37 RULE 4 OF THE CIVIL PROCEDURE RULES OF THE LAWS OF KENYA**

**BETWEEN**

**EQUITY BANK (KENYA) LIMITED ..... APPLICANT**

**AND**

**SOURING & CONSTRUCTION INDUSTRIES COMPANY  
LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Before the Court for determination is the Originating Summons dated 26<sup>th</sup> July 2024 brought pursuant to the provisions of Sections 90(1)(2)(3)(e), 96, 97, 98, 104(1) and 150 of the Land Act No.6 of 2012, Order 37, Rule 4 of the Civil Procedure Rules, and Sections 1A, 1B, and 3A of the Civil Procedure Act and which seeks for the determination of the following questions:
  - a. Whether this court has jurisdiction to issue the orders as enumerated below.



- b. Whether the Applicant in this suit can seek the Court's leave to sell the suit property known as volume LT 36 folio 140 file 4583 Portion Number 2334 (Original No. 1935/206) Malindi, in exercise of the said Applicant's Statutory Right of Sale at the best reasonable obtainable price but not necessarily one above forced sale value as the Applicant has conducted several auctions which have all failed due to low bids.
  - c. Whether the Applicant has exercised reasonable care to ensure that the subject property obtains the best market price during its sale.
  - d. Whether the sale of the suit property at the best obtainable price, but not necessarily above the forced sale value, is the only viable solution to reduce a greater part of the balance owed by the Respondent to the Applicant.
  - e. Who shall bear the costs of this suit?
2. The Supporting Affidavit of the Applicant Credit Manager, Benjamin Mutisya Nzioka, meticulously supports the OS, detailing every step taken.
  3. Despite being served with the Originating Summons, the Respondent did not file a response, leaving the suit undefended and their position unrepresented, although they appointed counsel, Mr. Mouko, to represent them.
  4. The Applicant filed written submissions regarding grounds (b) to (d) as enumerated in paragraph 1 above, but did not address the question of jurisdiction.
  5. It is undisputed that the Respondent herein is the registered proprietor of all that property known as Volume LT 36 Folio 140 File 4583 Portion Number 2334 (Original No. 1935/206) Malindi.
  6. As the borrower, the Respondent sought and obtained loan facilities from the Applicant Bank, which were secured by:
    - i. A First Legal Charge dated 13<sup>th</sup> August 2014 for Kes. 6,000,000/-; and
    - ii. A Further Legal Charge dated 9<sup>th</sup> November 2016 for Kes. 6,600,000/- registered over the title of the suit property.
  7. Sometimes in 2019, the Respondent failed to repay the money advanced to it under the expressed and implied terms of the said Charge Documents, causing the Applicant to issue a demand for payment of arrears, which at the time stood at Kes. 3,862,918.19/-
  8. Upon lapse of the 3 months stipulated in the demand letter aforesaid and noting that the Respondent had failed to liquidate the debt, the Applicant issued to the Respondent and its directors a 90-day Statutory Notice dated 27<sup>th</sup> February 2020 pursuant to Section 90 of the *Land Act*. The outstanding liability at the time stood at Kes. 4,020,107.84/-.
  9. Upon expiry of the 90 days' statutory notice aforesaid, the Applicant issued the Respondent Company and its directors with a subsequent 40 days' Statutory Notice dated 11<sup>th</sup> June 2020 pursuant to Section 96 of the *Land Act*. The outstanding liability then stood at KES. 4,156,937.64/-.
  10. Upon the expiry of the 40 days' Statutory Notice aforesaid, the Applicant on 7<sup>th</sup> August 2020 instructed Purple Royal Auctioneers to proceed to issue and serve the Respondent with the requisite 45 days' Auctioneer's Redemption Notice and the Notification of Sale. Contemporaneously, the Applicant instructed Nile Real Appraisers (EA) Limited to conduct a security valuation.



11. The land valuer proceeded per the Applicant's instructions and evaluated the security. Thereafter, a Valuation Report dated 17<sup>th</sup> August 2020 was prepared and shared.
12. The said firm of Auctioneers proceeded per the Applicant's instructions and served the Respondent with the requisite 45-day Auctioneer's Redemption Notice and the Notification of Sale of Immovable Property.
13. Upon the expiry of the 45 days' Auctioneer's Redemption Notice, the said Auctioneer proceeded to advertise the suit property for sale in one of the Local Dailies in an auction slated for 22<sup>nd</sup> August 2020.
14. The auction was held on the date aforementioned. Unfortunately, the auction received zero (0) bids and thus failed to reach the forced sale value or the reserve price Kes. 16,950,000/-
15. The Applicant, undeterred by the initial auction's failure, instructed the Auctioneers to re-advertise the suit property for sale in one of the Local Dailies, demonstrating their commitment to resolving the issue. The second auction date was slated for 9 February 2022.
16. The Applicant also instructed Pinnacle Valuers to conduct a valuation of the suit property, giving a reserve price of Kes. 12,800,000/-
17. The second auction was conducted on 9<sup>th</sup> February 2022. Unfortunately, the auction failed to reach the forced sale value or reserve price of Kes. 12,800,000/-
18. Vide a Letter dated 11<sup>th</sup> October 2022, Purple Royal Auctioneers wrote to the Manager of the Applicant informing him that they have been marketing the suit property and have proceeded to take other interested prospective bidders to view, to verify the details of the same. Still, the offers they keep getting are below the bare minimum of Ks. 12,800,000/- aforesaid. Further, the highest offer they have received is Kes 8,000,000/- and KES 6,000,000/- from several clients, and no one was willing to enhance their offers.
19. On 15 October 2022, the Applicant wrote to the Auctioneers, instructing them to urgently re-advertise and sell the suit property by public auction, noting that they must strictly comply with all relevant requirements under the Auctioneers Rules—1997, specifically Rules 15, 16, 17, and 18 of the said Auctioneers Rules.
20. On 20<sup>th</sup> December 2023, the Applicant wrote to Accurate Valuers Limited instructing them to proceed to conduct a valuation and prepare a valuation report on the suit property.
21. Pursuant to the instructions aforesaid, Accurate Valuers Limited inspected the suit property on 9<sup>th</sup> January 2024 and returned a Valuation Reporting dated 10<sup>th</sup> January 2024 showing the following valuations:
  - a. Current Open Market Value of KES. 11,000,000/-; and
  - b. Forced Sale Value of KES. 8,250,000/-
22. The third auction was conducted on 21<sup>st</sup> February 2024. Unfortunately, the auction received zero (0) bids and thus failed to reach the forced sale value or reserve price of Kes. 8,250,000/-.
23. The Applicant notes with grave concern that even the highest offer received by the Auctioneers, Kes. 8,000,000/—, as already indicated above, still falls short of the Forced Sale Value of Kes. 8,250,000/— returned by Accurate Valuers Limited.
24. Since the Applicant has tried to auction the suit property several times, the auctions have been unsuccessful due to the low bids received. The Applicant is worried that the outstanding debt, which



continues to accrue interest, may very soon outstrip the value of the security held. The current outstanding balance as of 15<sup>th</sup> July 2024 is Kes. 7,242,785.09/-.

25. The Applicant submits that this court has the power and authority to grant the Applicant leave to sell the suit property at the best obtainable price, but not necessarily above the forced sale value, citing NCBA Bank Kenya PLC v Angran Limited [2021] KEHC 314 (KLR) and Equity Bank (Kenya) Limited v Maina [2024] KEELC 6786 (KLR), where the courts confronted with similar applications granted the orders sought.
26. Based on the averments and submissions by the Applicant, the primary issue in this matter is a sale resulting from a legal charge(s) placed by the Applicant over the subject property, which leads to a commercial dispute. I believe this is an issue that warrants attention in our Commercial Division of the High Court.
27. In this, I am guided by the decision in Thomas Mutuku Kasue v Housing Finance Company Ltd (HFC) & Another [2021] eKLR quoted with approval in Keter v Ecobank Kenya *Limited (Civil Case 16 of 2018)* [2022] KEHC 13352 (KLR) (28 September 2022) (Ruling):
- “The substratum of the suit relates to the legal charges and the subsequent statutory power of sale. The High Court has jurisdiction to deal with a dispute in which the predominant issue is the exercise of the statutory power of sale by the charge. In Thomas Mutuku Kasue vs Housing Finance Company Ltd (HFC) & Another [2021] eKLR the court held; The Court of Appeal, whose decision is binding on this court, has held that where the predominant issue in a suit involves mortgages, charges, collection of dues and rents, it is the High Court, and not the Environment and Land Court, that has jurisdiction to deal with the dispute. That being so, and the predominant issue in this matter being the issuance of the statutory notices by the chargee, it is my finding that this court does not have jurisdiction to hear and determine this suit.”
28. The OS's substratum is sale arising from or consequent to the Respondent's failure to meet its obligations under a legal charge(s). That being the position, we have a commercial transaction returnable as stated in the High Court Commercial Division. Pursuant to the decision in Owners of The Motor Vessel “Lillian S v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR) - I cannot proceed further or purport to issue orders where I am bereft of jurisdiction - I down tools; I need not consider the other succeeding issues. Let the Applicant approach the appropriate forum. The current suit is struck out.
29. Since the matter was not defended, there will be no order as to costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Mbachii, for the Applicant

Court Assistant: Happy

In the Absence of:

Mr. Mouko, for the Respondent.

