



**Marite v Equity Bank Limited & another (Environment and Land Miscellaneous Case E007 of 2024) [2025] KEELC 3317 (KLR) (Environment and Land) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3317 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E007 OF 2024**

**MC OUNDO, J**

**APRIL 24, 2025**

**BETWEEN**

**MAXWELL KAHUHO MARITE ..... APPLICANT**

**AND**

**EQUITY BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PHILLIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated 27<sup>th</sup> June 2024 brought pursuant to the provisions of Order 40 Rule 1 and Rule 4(1) of the *Civil Procedure Rules*, Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law, the Applicant has sought for interim orders of injunction restraining the Respondents, their agents, servants, representatives or otherwise from disposing of land parcel Title No Naivasha/Mwichiringiri Block 5/160 Karagita shopping Centre along the outskirts of Naivasha town, Nakuru County.
2. The Applicant also sought that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be compelled to carry out a valuation of all that property known as Title No Naivasha/Mwichiringiri Block 5/160 Karagita shopping Centre-Naivasha town Outskirts, Nakuru County on or before the 24<sup>th</sup> July, 2024, and for costs of the application.
3. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Maxwell Kahuhho Marite, the Applicant herein who deponed that he was the owner of the property known as Title No Naivasha/Mwichiringiri Block 5/160 Karagita shopping Centre-Naivasha town Outskirts, Nakuru county (the property). That the property had been charged to Equity Bank Limited, Fourways Branch Nairobi, the 1<sup>st</sup> Respondent herein wherein on or around the year 2021, he had fallen behind in the payment of the monthly loan following the covid pandemic.



4. That the Fahari Valuers Limited who had been retained by the 1<sup>st</sup> Respondent, had valued the property at Kshs 38,000,000/= in the year 2021 That on the 9<sup>th</sup> May, 2024, he had been served with a 45 Days Redemption Notice by the 2<sup>nd</sup> Respondent on behalf of the 1<sup>st</sup> Respondent which had required him to pay Kshs 16,958,122.11/= as at 24<sup>th</sup> April 2024. That the Auctioneers had then issued a notification of sale of immovable property which had stated that the Grand total current Open Market Value was Kshs 38,000,000/=, Forced Sale Value was Kshs 28,500,000/=, Insurance Value Kshs 30,000,000/= and the Mortgage Value as Kshs 30,000,000/=.
5. That however, the current valuation of the property of the said Redemption Notice had been based on the valuation that had been carried out in the year 2021 contrary to the Auctioneers rule 11(b) (x). He thus sought a court order to have an independent valuation done on the property according to the Auctioneers rule 10.
6. That he had made out a *prima facie* case for the grant of interim orders of relief;’ the valuation report by the 2<sup>nd</sup> Respondent had been the one based on a semi complete property in the year 2021, the proposed auction using the valuation of the year 2021, would result in a lower realized property value, resulting in a loss which could not be compensated in form of damages as the property would have been lost forever.
7. That the balance of convenient tilted in his favour because the 3<sup>rd</sup> Respondent’s Notice had not provided a current valuation of the property before the auction process had proceeded in order to ensure that the auction process was fair. That were the Orders not granted, the Respondents would proceed with the sale which would greatly prejudice him.
8. In response and in opposition to the Applicant’s Application, the 1<sup>st</sup> Respondent vide its Replying Affidavits dated 26<sup>th</sup> August, 2024 sworn by Peter Karuma, its Credit Manager at Fourways Branch deponed that the Applicant had been a customer of the 1<sup>st</sup> Respondent wherein he had enjoyed its various Loan Facilities and services. That the Applicant received a loan facility amounting to an aggregate of Kshs 13,100,000/= which facility he had secured by Property Title No Naivasha/Mwichiringiri Block 5/160, Motor Vehicle Registration No KAX 180U Isuzu Lorry and Trailer Registration No ZE 8089.
9. That subsequently whereas the Applicant had continued to repay the loan facility with the 1<sup>st</sup> Respondent, he had stopped and started defaulting on his repayment obligations pursuant to which the 1<sup>st</sup> Respondent had issued him a Demand Notice dated 23<sup>rd</sup> April, 2021. That upon receipt of the said Demand Notice, the Applicant had filed MCCOMSU/E771/2021-Maxwel Kahuhio Marite v Equity Bank (Kenya) Limited at the Chief Magistrates Court at Milimani seeking to stop the 1<sup>st</sup> Respondent from exercising its statutory rights and remedies as a Chargee after expiration of the notice. That upon the determination of the said case, the court had adopted a loan restructuring agreement dated 24<sup>th</sup> June, 2021 which had been consented to by both the Applicant and the 1<sup>st</sup> Respondent herein as the Judgement of the court.
10. That accordingly, the 1<sup>st</sup> Respondent and the Applicant had restructured the Loan Repayment Agreement between them hence the Applicant had been granted the latitude to remedy his default. That nevertheless, the Applicant had consistently continued defaulting on the terms of the Loan Restructuring Agreement, necessitating the 1<sup>st</sup> Respondent to instruct the 2<sup>nd</sup> Respondent to issue 45 days redemption notice to the Applicant on 9<sup>th</sup> May, 2024 and a subsequent Notification of Sale of Immovable Property letter dated 9<sup>th</sup> May 2024.



11. That in the circumstances, the 1<sup>st</sup> Respondent had conducted and completed a recent valuation of the suit property title number Naivasha/Mwicingiri Block 5/160 on 17<sup>th</sup> July, 2024 hence the Applicant's prayer requiring the 1<sup>st</sup> Respondent to conduct a fresh valuation had been spent.
12. That from the forgoing, the suit herein was frivolous, and otherwise an abuse of the court's authority hence it was in the interest of justice that the same be struck out to enable the 1<sup>st</sup> Respondent to proceed with the realization of the security for the Facility that had been granted to the Applicant.
13. The 2<sup>nd</sup> Respondent's response vide its Replying Affidavit dated 10<sup>th</sup> September, 2024 and sworn by George Muiruri, a Licensed Auctioneer was that he had been instructed by the 1<sup>st</sup> Respondent to undertake the sale of property title No Naivasha/Mwicingiri Block 5/160 that had been charged by the Applicant to the 1<sup>st</sup> Respondent. That subsequently, they had issued a 45 Days' Notice dated 9<sup>th</sup> May, 2024, together with a Notification of Sale dated 9<sup>th</sup> May, 2024, that had been addressed to the Applicant, notifying him of his default and inviting him to redeem the said property title No Naivasha/Mwicingiri Block 5/160 from the statutory power of sale by the 1<sup>st</sup> Respondent. He thus deponed that his rights and liabilities were those of a mere Seller. That claim against the 2<sup>nd</sup> Respondent was misplaced, frivolous and vexatious as the suit did not disclose any act or omission by the 2<sup>nd</sup> Respondent including its employees, agents or officers as alleged. That the present suit was frivolous and was otherwise an abuse of court's authority.
14. In a rejoinder to the 1<sup>st</sup> Respondent's response, the Applicant filed a Further Affidavit dated 28<sup>th</sup> October, 2024 wherein he denied being a consistent defaulter on the terms of Facility Agreement and Loan Restructuring Agreement that had been adopted as Consent Judgement. That he had opened an alternative account at the Narok Branch of the 1<sup>st</sup> Respondent to receive funds from a farming activity he had been undertaking as a means to get funds to repay the outstanding loan owed to the 1<sup>st</sup> Respondent.
15. That without his knowledge and consent, from November 2020 to 31<sup>st</sup> January 2022, the 1<sup>st</sup> Respondent's credit officer from Fourways branch which was the loan account, had collected and transferred amounts of up to Kshs 303,000/= from the said account thus crippling him and rendering him unable to harvest the crop leading to a loss of up to Kshs 3,000,000/=. That the 1<sup>st</sup> Respondent's act of unlawfully withdrawing sums from another account other than the loan account that had made him transgress the Consent Judgement of 24<sup>th</sup> June, 2021.
16. That the Respondent's actions had been malicious and ill intended toward the Applicant, hence he had come to court with clean hands seeking for justice. That the valuation report done on 17<sup>th</sup> July, 2024 had indicated an amount of Kshs 25,000,000/= which was less than the valuation that had been done in July 2021 Fahari Valuers Limited who had valued an incomplete building at Kshs 38,000,000/-
17. That the 1<sup>st</sup> Respondent had instructed the 2<sup>nd</sup> Respondent to commence recovery process against the Applicant on the suit property using the valuation report which had been done by the Fahari Valuers Limited in the year 2021.
18. That the rule of the thumb was that the value of property generally increases over time, and did not depreciate unless there were extraneous factors surrounding the suit property like wasting of property due to negligence and lack of care, which factors had not been cited in the valuation report of the suit property that had been done by Accurate Valuers in the year 2024.
19. That subsequently, the 1<sup>st</sup> Respondent's action had been contrary to the provisions of the law which provide that the Chargee owes a duty of care to the Chargor to obtain the best price reasonably



obtainable at the time of sale thus it would be prejudicial for himself to allow the auction to proceed based on the valuation report of Accurate Valuers Limited of the year 2024.

20. That the cost of the Application and the 2<sup>nd</sup> Respondent's lie with the 1<sup>st</sup> Respondent as the suit was as a result of their negligence.
21. In the pendency of the Application, another Valuation Report dated 27<sup>th</sup> January, 2025 was filed for which the Applicant filed a Further Affidavit in Support of the same stating that he had engaged Epi consults Ltd to conduct a fresh, independent valuation of the suit property wherein the market value had been placed at Kshs 42,000,000/=which was a significant variation from both the 2021 and 2024 valuation reports by the 1<sup>st</sup> Respondent. That that the new valuation report had provided a fair and precise assessment of property's value thus the same should be relied upon in the proceedings.
22. Directions were taken for the Application to be disposed of by way of written submissions, wherein both parties complied.

### Determination

23. I have however considered the application herein, the response in opposition and the submissions thereto, the law and the authorities therein cited.
24. Section 13 (1) & (2) of the *Environment and Land Court Act* provides for the Jurisdiction of the ELC Court as follows:

“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.”

25. In the case of *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR, the Court of Appeal had held as follows:

‘By definition, a charge is an interest in land securing the payment of money or money’s worth or the fulfillment of any condition (see Section 2 of the *Land Act*). As such, it gives rise to a relationship where one person acquires rights over the land of another as security in exchange for money or money’s worth. The rights so acquired are limited to the realization of the security so advanced (see Section 80 of the *Land Act*). The creation of that relationship therefore, has nothing to do with use of the land (as defined above). Indeed, that relationship



is simply limited to ensuring that the chargee is assured of the repayment of the money he has advanced the chargor.

..... Furthermore, the jurisdiction of the ELC to deal with disputes relating to contracts under Section 13 of the ELC Act ought to be understood within the context of the court's jurisdiction to deal with disputes connected to 'use' of land as discussed herein above. Such contracts, in our view, ought to be incidental to the 'use' of land; they do not include mortgages, charges, collection of dues and rents which fall within the civil jurisdiction of the High Court."

26. In the most recent case in Smith & another v Kenya Deposit Insurance Corporation (As receiver of Chase Bank Limited) & another [2025] KECA 294 (KLR) the Court of Appeal comprised of a different bench reiterated as follows;

'We then ask a simple question: what then would a court presiding over such a dispute be required to do? The answer to the question is simple: the trial court would be expected to interrogate the terms of the loan facility, inspect the loan statements to be produced in court, further interrogate whether the borrowing party is in default or not, and if the lending party's right to exercise its statutory power of sale over the charged property had crystallised. These issues are a clear pointer that none would amount to a determination of the 'use' and 'occupation' of, the charged property. To our minds, it matters not whether at the time when the charged property was being offered as security was developed or not, but that the parties to the loan agreement fulfilled their respective obligations. For all intent and purposes, and without any iota of doubt, that would be a commercial dispute.

.....In view of the foregoing, we disagree with the learned Judge's view that the issues in contention related to the "...the environment and the use and occupation of, and title to, land" as contemplated in Article 162 of the Constitution and section 13 of the ELC Act. The use of land does not include a situation whereby the charge instrument is put to test and/or where the chargor and chargee each claim interest from the charge instrument."

27. Having considered the arguments herein above for and against the application and having found that the dominant issue in the suit before the court was the settlement of amounts owing from the Applicant to the 1<sup>st</sup> Respondent on account of a contractual relationship of a banker and lender, and further, guided by the reasoning of the Court of Appeal in the above cited cases, I find that the Court of Appeal, whose decision is binding on this court, having 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, I find that this court is bereft of the jurisdiction over the matter which can only lie with the Commercial Division of the High Court. To this effect both the Application and the suit are herein struck out with costs.

**DATED AND DELIVERED AT NAIVASHA VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

