



African Budget and Executive Homes Company Limited & another v Middle East Bank Kenya Limited & another (Environment & Land Miscellaneous Case E010 of 2023) [2025] KEELC 94 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELC 94 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND MISCELLANEOUS CASE E010 OF 2023
FM NJOROGE, J
JANUARY 23, 2025**

BETWEEN

**AFRICAN BUDGET AND EXECUTIVE HOMES COMPANY LIMITED 1ST PLAINTIFF
DAVID MURIITHI KANYI 2ND PLAINTIFF**

AND

**MIDDLE EAST BANK KENYA LIMITED 1ST DEFENDANT
SUSAN WAWERU T/A TREVO AUCTIONEERS 2ND DEFENDANT**

RULING

1. It has been the practice of this court to hear interlocutory applications solely on the basis of written submissions owing to their sheer numbers and their impact of reducing the time available for substantive hearings of suits, a practice all practitioners appearing before it are conversant with; thus no order of oral submissions in respect of such applications is made unless parties so apply. This court notes from the proceedings and its own recollection that Mr Ismail appearing for the respondent was emphatic in his request that the parties should be granted an oral hearing on the application dated 11/8/2023. On 18/1/2024, the court allowed Mr Ismail’s plea and ordered that parties shall be allowed to submit orally before court. However, on 26/2/2024 when parties’ counsel appeared before court, submissions of the parties were on the record and the court observed that highlighting would not be done and reverted to the renowned method of disposal and issued a ruling date. Ismail & Ismail advocates have now filed on behalf of the 1st defendant an application dated 19th September 2024 in which, inter alia, an order of setting aside of the ruling and orders made on 29/5/24 was sought. The application has the grounds it is premised upon listed at its foot. I have perused the court file and the CTS portal and I have found that the application is unopposed. Ismail & Ismail Advocates filed submissions on the application on 9/1/2025. The gist of the said application which is principally



premised on the provisions of the Article 50 of the Constitution and Section 80 CPA is that the applicant has been denied due process of the law. I have noted the errors on the face of record mentioned by the applicant, but besides those this court has noted another error between paragraphs 5-12. The applicant posits that he was not heard, and it is not lost on this court that it reversed suo moto the earlier order of an oral hearing which the applicant had longed for and ardently urged through Mr Ismail. By virtue of its inherent jurisdiction under Section 3A and in view of the provisions of Article 50 of the Constitution, the overriding objective in Section 1A CPA and the requirement of efficiency in disposal of court business provisions of Section 1B CPA, this court is of the view that the application dated 11th August 2023 ought to be heard de novo in order to grant every involved party an opportunity of presenting their arguments orally if they so wish. The upshot of the foregoing is that the application dated 19th September 2024 is hereby disposed of in this manner:

- a. The ruling and orders dated 29/5/2024 are hereby set aside;
- b. For expedition, the application dated 11/8/2023 and the preliminary objection dated 18/9/2023 shall be heard orally on 5/2/2025 at 2:00 p.m. in open court when counsel shall highlight the filed submissions on law and facts and a ruling date shall be issued on that day;
- c. To be fair to all parties, no further documents shall be filed into the record and parties shall rely solely on what they have already filed, and also all orders as extended from time to time shall be deemed in place and extended up to 5/2/2025.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 23RD DAY OF JANUARY 2025.

MWANGI NJOROGE

JUDGE,

ELC MALINDI

