



REPUBLIC OF KENYA



KENYA LAW
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**Son Hardware Ltd v Development Bank of Kenya, Ltd & another
(Cause 10 of 2021) [2022] KEELC 3164 (KLR) (14 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3164 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CAUSE 10 OF 2021
MN GICHERU, J
JUNE 14, 2022**

BETWEEN

SON HARDWARE LTD PLAINTIFF

AND

DEVELOPMENT BANK OF KENYA, LTD 1ST DEFENDANT

**JOSEPH M GIKONYO T/A GARAM INVESTMENTS AUCTIONEERS 2ND
DEFENDANT**

RULING

1. This ruling is on the application dated 2/2/2022 which seeks one main prayer namely;
 - a. That the order of 19th August, 2021 issued by Hon. Justice Angote be re-issued or reinstated.

There are various grounds on which the application is based. The main one is that there is an error apparent on the face of the record in that instead of the Court making a ruling on the Preliminary Objection, as it had earlier directed, it ruled on the application dated July 16, 2021.

The application is supported by an affidavit by the Applicant's director dated 2/2/2022 in which he highlights the error made by the Court.

There is a supplementary affidavit which answers the Respondent's replying affidavit sworn by Silas Aluku and dated 25/2/2022. The gist of the Respondent's affidavit is that the application by the Applicant is an abuse of the Court process because of the Plaintiff's penchant of filing a multiplicity of applications to circumvent the doctrine of *res judicata*.

I have carefully considered the application in its entirety, including the affidavits and the entire record and I find that, it is fair and just to allow the application and order that the status quo be maintained.



The reasons for making this order is that so far, this case has not been heard. It has emerged that there are two different plots offered by the Applicant namely, Ngong/Ngog/24258 and 33632.

It is alleged that in regard to one of them, there was no notification of sale. It is also alleged that no money was advanced to the Plaintiff and that what happened is that the first Defendant breached the original arrangement between it and the Plaintiff.

Under Article 50 (1) of the Constitution, a party to a dispute has the right to a fair hearing by a Court. There is an error on the face of the record as to which application the ruling of 24/1/2022 related to between the preliminary objection dated 21/9/2022 and the one dated 16/7/202.

I therefore allow the application dated 2/2/2022.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

