



**Coast Iron Engineering Limited v Adam & 2 others (Environment & Land  
Case 133 of 2021) [2022] KEELC 13686 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13686 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 133 OF 2021  
NA MATHEKA, J  
OCTOBER 25, 2022**

**BETWEEN**

**COAST IRON ENGINEERING LIMITED ..... PLAINTIFF**

**AND**

**NOORJAHAN EBRAHIM ADAM ..... 1<sup>ST</sup> DEFENDANT**

**SBM BANK (K) LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**KEYNESIAN AUCTIONEERS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Application is dated 26<sup>th</sup> April 2022 and is brought under Order 40, Order 42 rule 6, Order 51 rule 1 of the *Civil Procedure Rules 2010*, and Section 1A, 1B, 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya seeking the following orders;
  1. That this Application be heard ex-parte and service thereof be dispensed with in the first instance.
  2. That this Honourable Court be pleased to issue an Order of injunction restraining the Respondents herein either by themselves, their agents, assignees, servants, auctioneers and/or third parties from disposing, selling, auctioning, advertising for sale, attaching and/or interfering in whatsoever manner with all that parcel of land known as Title No. Mainland North/Section 1/20247 Apartment No. 22 - Block B, 2<sup>nd</sup> Floor, (CR NO. 67477) pending hearing and determination of this Application.
  3. That this Honourable Court be pleased to issue an Order of injunction restraining the Respondents herein either by themselves, their agents, assignees, servants, auctioneers and/or third parties from disposing, selling, auctioning, advertising for sale, attaching and/or interfering in whatsoever manner with all that parcel of land known as Title No. Mainland



North/Section 1/20247 Apartment No. 22 - Block B, 2<sup>nd</sup> Floor, (CR NO. 67477) pending hearing and determination of the Appeal.

4. That costs of this Application be provided for.
2. It is based on the grounds that the Applicant is the beneficial owner of the suit property having purchased the same from the 1<sup>st</sup> Respondent. That the Applicant herein being dissatisfied with the ruling of this Honourable Court has preferred an Appeal against the said ruling. That the 2<sup>nd</sup> Defendant/Respondent has through the 3<sup>rd</sup> Respondent issued a 21 day's Notice and Notification of Sale of immovable property being Title No. Mainland North/Section 1/20247 Apartment No. 22 - Block B, 2<sup>nd</sup> Floor, (CR NO. 67477) which lapses on the 4<sup>th</sup> May, 2022. That there is an Application pending in which the Applicant has preferred an appeal against the ruling of this Honourable Court and at advanced stage of parties filing Submissions and mention slated for 31<sup>st</sup> May, 2022. That unless this Honourable Court issues an injunctive orders restraining the Respondents herein, they shall proceed to sell the said property to the detriment of the Plaintiff/Applicant and in defeat of justice. That further unless this Honourable Court issues the injunctive orders restraining the Respondents jointly and severally the Applicant will suffer irreparable loss as the property shall have been sold and/or transferred to another party which shall complicate the case in in the event it is in the best interest of the Applicant. That it is imperative that there be an injunction stopping the Respondents from auctioning the suit property pending an Appeal against the ruling. That the Applicant has high chances of success for what he is asking for is the 1<sup>st</sup> Respondent to be compelled to complete the transaction to enable the Applicant pay the balance of the Purchase Price. That there is no danger and/or loss on the part of the 2<sup>nd</sup> Defendant/Respondent since the amount claimed can be paid via the balance of the Purchase Price. That the Respondents will suffer no prejudice since the case is pending in court and at advance stage and shortly the case will be determined by this Honourable Court. That it is in the best interest of justice if the orders sought are granted.
3. This court has considered the Application and the submissions therein. This Application for an order of injunction pending the hearing and determination of the appeal has been brought under Order 42 Rule 6 of the Civil Procedure Rules which provides that;
4. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the Application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on Application being made, to consider such Application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
5. In the case of *Patricia Njeri & 3 Others vs National Museum of Kenya* (2004) eKLR, the court held that;

There was no dispute that the court can, in a proper case grant an injunction pending appeal.  
What are the principles that guide the court in dealing with such an Application?
6. In the Venture Capital case the Court of Appeal said that an order for injunction pending appeal is a discretionary matter. The discretion must, however, be “exercised judicially and not in whimsical or arbitrary fashion.” This discretion is guided by certain principles some of which are as follows:



- a. The discretion will be exercised against an Applicant whose appeal is frivolous (See *Madbupaper International Limited vs Kerr* (1985) KLR 840 (cited in Venture Capital). The Applicant must state that a reasonable argument can be put forward in support of his appeal (*J. K. Industries vs KCB* (1982 – 88) KLR 1088 (also cited in Venture Capital))
  - b. The discretion should be refused where it would inflict greater hardship than it would avoid (See *Madbupaper* supra).
  - c. The Applicant must show that to refuse the injunction would render his appeal nugatory (See *Butt vs Rent Restriction Tribunal* (1982) KLR 417 (cited also in Venture Capital)).
  - d. The Court should also be guided by the principles in *Giella vs Cassman Brown & Company Ltd* (1973) EA 358 as set out in the case of *Shitukha Mwamodo & Others* (1986) KLR 445 (also cited in Venture Capital).”
7. The Plaintiff intends to appeal against the decision of this court dated 22<sup>nd</sup> February 2022. The said ruling dismissed his Application dated 12<sup>th</sup> July 2021 that sought inter alia an order of temporary injunction restraining the Defendants from dealing with LR MN/1/20247 pending the hearing and determination of the suit. The Plaintiff has lodged a notice of appeal before this court on 3<sup>rd</sup> March 2022. As held in Patricia Njeri (supra), the Plaintiff is required to show that they have an arguable case and that their appeal will be rendered nugatory unless a temporary injunction is granted. The Applicant has not attached a draft memorandum of appeal in the supporting affidavit to show the grounds upon which they will be asking the appellate court to interfere with the exercise of discretion of this court. The court cannot tell whether or not the plaintiff intended appeal raises arguable questions of law particularly given that the Application dated 12<sup>th</sup> July 2021 was dismissed on the ground that there was no prima facie case established.
8. The court had earlier, in the Notice of Motion dated 12<sup>th</sup> July 2021 found that the plaintiff had not made out a prima facie case with probability of success and no evidence has been adduced by court that would demonstrate that anything has changed since then. In my view, the plaintiff is abusing the court process by essentially re-litigating on issues already decided upon by court. In the case of *Virginia Njeri Murimah vs Mbo-I Kamiti Farmers Co. Ltd* (2014) eKLR, the court held that;

This Court will therefore be rehashing and relitigating issues it has already decided on if it proceeds to hear and determine the instant Application. The proper forum for the Plaintiff to seek an injunction pending appeal is therefore in the Court of Appeal, where she has already filed her appeal.”

9. For those reasons I find the Notice of Motion dated 26<sup>th</sup> April 2022 devoid of merit and I dismiss with costs to the Defendants/Respondents.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF OCTOBER, 2022.**

**N.A. MATHEKA**

**JUDGE**

