



Charles Githinji Keiru t/a Kelyn General Services v Standard Chartered Bank Ltd (Commercial Case E586 of 2023) [2025] KEHC 790 (KLR) (Commercial and Tax) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 790 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E586 OF 2023
MN MWANGI, J
JANUARY 17, 2025

BETWEEN

CHARLES GITHINJI KEIRU T/A KELYN GENERAL SERVICES ... APPLICANT

AND

STANDARD CHARTERED BANK LTD DEFENDANT

RULING

1. The plaintiff/applicant filed a Notice of Motion application dated 24th March 2024 pursuant to the provisions of Rules 1, 2 & 3 of the Civil Procedure Rules 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act*, Sections 97, 98, 103 & 104 of the *Land Act*, 2012, and all enabling provisions of the law. The plaintiff seeks an order of injunction against the defendants, their servants and/or agents, restraining them from transferring, evicting and/or interfering whatsoever with his quiet enjoyment of all that property known as L.R. No. 21976/49, pending delivery of the ruling in respect to the application dated 23rd November 2023, and pending the hearing and determination of this suit. The plaintiff also seeks an order for the status quo to be maintained until delivery of the aforesaid ruling, and that the defendant and/or Valley Auctioneers be compelled to produce the proceedings of the auction conducted on 22nd May 2024 in respect to the suit premises.
2. The application is premised on the grounds on the face of the Motion, and it is supported by affidavits sworn on 24th May 2024 by Charles Githinji Keiru, the plaintiff herein. The plaintiff claims ownership of a parcel of land known as L.R. No. 21976/49. He averred that on 2nd October 2019, he took a mortgage facility of Kshs.47,027,460.00 from Kenya Commercial Bank, which facility was later taken over by the defendant, which charged all that parcel of land known as L.R. No. 21976/49 as security. He also averred that on 25th October 2019, he obtained a second financial facility of Kshs.15,000,000.00 from the defendant in the form of a bank guarantee for his petroleum business



- under Vivo Energy. He deposed that on 3rd March 2023, Vivo Energy called the guarantee demanding payment of Kshs.10,503,510.00 which the defendant paid, leaving a balance of Kshs.4,496,490.00.
3. The plaintiff further deposed that he has repaid Kshs.19,315,649.93 out of the Kshs.46,119,470.00 disbursed to him by the defendant, but the latter issued him with a statutory notice dated 22nd June 2023 demanding Kshs.16,886,295.70. He stated that upon the lapse of the said statutory notice, the defendant issued him with a 40-day notice of statutory power of sale on 18th October 2023, as a result of which he instructed his Advocates on record to file an application dated 28th November 2023 which sought an order of injunction against the defendant, its servants, agents or employees, restraining them from proceeding with the sale of all that property known as L.R. No. 21976/49.
 4. He contended that the aforesaid application initially scheduled for a ruling on 17th May 2024 before this Court, was postponed to 20th September 2024 since the learned Judge was sitting on a Tribunal appointed vide Gazette Notice No. 2536 dated 8th March 2024. He stated that despite the pending ruling on the application dated 28th November 2023, the defendant advertised the suit property and on 22nd May 2024, and attempted to sell it through Valley Auctioneers at a price far below its market value without serving him with a public auction notice. He asserted that allowing the defendant's actions to continue would result in the loss of the suit property, which is his matrimonial property.
 5. The defendant opposed the instant application vide a replying affidavit sworn on 4th June 2024 by Boniface Machuki, a Manager in the defendant's Legal Collections and Recoveries Unit. He averred that the plaintiff secured banking facilities from the defendant, secured by a legal charge created over the suit property in favour of the defendant, but the plaintiff defaulted in the repayment of the banking facilities and the defendant invoked its statutory power of sale over the suit property. That consequently, the plaintiff approached this Court on 30th November 2023. Mr. Machuki contended that although the Court granted the plaintiff a conditional interim relief on 18th January 2024, the plaintiff failed to comply with the said condition, causing the relief to lapse automatically.
 6. Mr. Machuki deposed that Gimco Limited, under the defendant's instructions, valued and determined the market value, forced sale value, and insurance value of the suit property. The property was then advertised for sale at a public auction that was to be held on 22nd May 2024 in the Daily Nation Newspaper on 6th, 13th and 20th May 2024, and it was later sold at the said auction to Mr. Benjamin Gathiru Mejjadonk. As such, the defendant asserted that the only available remedy to the plaintiff if any, is damages.
 7. In a rejoinder, the plaintiff filed a supplementary affidavit sworn on 18th July 2024 by Charles Githinji Keiru, the plaintiff herein. He stated the defendant failed to demonstrate that it obtained the best possible price for the suit property by not providing an account and proceedings of the auction conducted on 22nd May 2024 to show comparative bids, if any. He further stated that while Gimco Limited, instructed by the defendant valued the suit property at Kshs.76,000,000/= being the market value and Kshs.57,000,000/= being the forced sale value, Dominion Valuers, engaged by the plaintiff, valued it higher, at Kshs.84,000,000.00 and Kshs.63,000,000/=, respectively. The plaintiff claimed that the said undervaluation breached the defendant's duty of care and urged this Court to void the auction under Section 97(3)(b) of the [Land Act](#).
 8. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed on 24th September 2024 by the law firm of Mogeni & Company Advocates, while the defendant's submissions were filed by the law firm of Muthomi & Karanja Advocates on 11th October 2024.
 9. Ms. Makori, learned Counsel for the plaintiff relied on the case of Hezron Kamau Gichuru v Kianioya Enterprises Ltd & another [2022] eKLR, and submitted that under Section 97(1) of the [Land Act](#),



the defendant had a duty of care to secure the best possible price for the suit property, but the property was sold for Kshs.57,220,000.00, which was below the plaintiff's inferred forced sale value of Kshs.63,000,000.00. She contended that merely claiming that the property was sold above its forced sale value does not prove compliance with the duty of care. She further submitted that the defendant failed to show evidence of competitive bids or transparency in the auction process, making the sale on 22nd May 2024 irregular, having been conducted in bad faith.

10. She stated that the suit property is the plaintiff's family home, and that in the event the instant application is disallowed, he stands to lose his home due to an unlawful and unprocedural auction. She asserted that the plaintiff has demonstrated the existence of a prima facie case and that he shall suffer irreparable damage in the event that an order of injunction is not granted.
11. Mr. Karanja, learned Counsel for the defendant relied on the case of *Mrao Limited v First American Bank of Kenya Limited & 2 others* [2003] eKLR, and submitted that the instant application does not disclose a prima facie case with a probability of success since the plaintiff had admitted that the loan facilities advanced to him by the defendant were in arrears, and that he was served with all the requisite statutory notices. Counsel referred to the case of *Omuya & 4 others v Knawels Business Agencies & 6 others; Nairobi City County & 2 others (Interested Parties)* [2023] KEELC 20222 (KLR), and further submitted that the attendance sheet, the Memorandum of Sale and the third party's transfer slips for the 25% deposit of the purchase price were annexed to the defendant's replying affidavit. Mr. Karanja stated that if the plaintiff requires additional documents from the defendant, he must comply with Sections 5 & 8 of the [Access to Information Act](#), as any other form of request would be premature.
12. Counsel cited the case of *Francis Ngarama Kiratu v Equity Bank* [2019] eKLR, and contended that the plaintiff had not demonstrated that he stood to suffer any irreparable loss in the event that the orders sought were not granted. Further, that since the suit property was legally sold to a third party, the plaintiff's equity of redemption was extinguished. As a result, the only remedy currently available to the plaintiff is damages as provided for under Section 99(4) of the [Land Act](#).

Analysis and Determination.

13. I have considered the instant application, the grounds on the face of the Motion and the affidavits filed in support thereof. I have also considered the replying affidavit by the defendant together with the written submissions by Counsel for the parties. The issues that arise for determination are –
 - i. Whether an order of temporary injunction should issue against the defendant; and
 - ii. Whether the defendant should be compelled to produce the proceedings of the auction conducted on 22nd May 2024 in respect to the suit property.

Whether an order of temporary injunction should issue against the defendant.

14. From the Court record and the Case Tracking System (CTS), it is evident that the application dated 23rd November 2023 referred to by the plaintiff in the instant application does not exist. What is on record, is an application dated 28th November 2023 seeking an order of injunction against the defendant/respondent, their servants, agents or employees, restraining them from proceeding with the sale of all that property known as L.R. No. 21976/49, pending the hearing of this suit. The said application was coming up for ruling on 17th May 2024, which was deferred to September 2024, but was delivered on 19th July 2024. In the said ruling, this Court dismissed the plaintiff's application dated 28th November 2023 since the plaintiff did not dispute the fact that the financial facilities advanced to him by the defendant were in arrears, thus he did not establish a prima facie case with a probability of success.



15. This Court further held that since the suit property was offered as security, it became a commodity for sale in the event of default. In addition, this Court held that the defendant is a financial institution which has the financial muscle to easily compensate the plaintiff in the event that the main suit was determined in the plaintiff's favour, and that the value of the suit parcel of land can be easily ascertained from a valuation of the land. This Court found that the plaintiff did not stand to suffer any irreparable loss that could not be adequately compensated by an award of damages in the event that the Court did not issue an order of injunction against the defendant.
16. On perusal of the instant application alongside the plaintiff's application dated 28th November 2023, I note that the only thing that has changed since then is that the suit property was sold to a third party in a public auction held on 22nd May 2024. The plaintiff challenges the said sale on grounds that the suit property was sold below its market value, and before he was served with a public auction notice. Rule 15 of the Auctioneers Rules states that –

Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property -

- a. record the court warrant or letter of instruction in the register;
 - b. prepare a notification of sale in the form prescribed in Sale Form 4 set out in the Second Schedule indicating the value of each property to be sold;
 - c. locate the property and serve the notification of sale of the property on the registered owner or an adult member of his family residing or working with him or where a person refuses to sign such notification, the auctioneer shall sign a certificate to that effect;
 - d. give in writing to the owner of the property a notice of not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction;
 - e. on expiry of the period of notice without payment arrange sale of the property not earlier than fourteen days after the first newspaper advertisement. (Emphasis added).
17. It is worthy of note that the plaintiff does not dispute service of a redemption notice and the notification of sale. Further, it is evident from the above provisions of the law that there is no requirement for service of a public auction notice on the chargor by the Auctioneer. To the contrary, Rule 15 provides that upon the lapse of the redemption notice, an Auctioneer may arrange for the sale of the charged property after advertising its sale in the Newspapers. It is not disputed that prior to the sale of the suit property in a public auction conducted on 22nd May 2024, the Auctioneers instructed to sell the suit property advertised its sale in the Daily Nation Newspapers on 6th, 13th and 20th May 2024. In the premise, I find that the Auctioneers fully complied with the provisions of Rule 15 of the Auctioneers Rules.
18. As to whether or not the suit property was sold at a value that was way below its market value, that is an issue that can only be determined after the hearing of the main suit, after the Court takes into account the testimony of the parties' witnesses and weighs it against the pleadings filed. Be that as it may, Section 99 (4) of the *Land Act*, 2012 provides that a person who is prejudiced by an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power. The Court of Appeal in the case of *Etrade Limited & another v Thrift Estates*



Limited & 2 others [2019] eKLR, when determining whether or not an allegation that a suit property is undervalued is a sufficient justification to grant an order for injunction the following-

In the present case, the chargee in exercise of its powers of sale under a charge sold the suit properties in a public auction.

The plaintiffs are now complaining that the said sale was irregularly conducted. They are seeking injunctive orders of this court to restrain the said property from being transferred to the transferee who purchased the said properties in a public auction...

The fact that they have alleged that the sale by public auction was fraudulently conducted by the chargee does not prima facie prove that they were are entitled to the orders of injunction sought. Statutory provisions in the event of such an eventuality is clear. If a party is aggrieved by the way the sale was conducted by public auction, he can only seek to be awarded damages. The plaintiffs cannot therefore say that they would suffer irreparable loss which cannot be compensated by damages if the order of injunction is not granted. Damages will be adequate compensation to them. Further, the balance of convenience tilts in favour of the 5th defendant who purchased the property in the public auction. He has invested his financial resources but has been unable to enjoy the use of the said properties. It would be inequitable to keep the 5th defendant away from his property just because the plaintiffs feel aggrieved by the way the chargee exercised its statutory power of sale in a public auction. In the premises therefore and for the reasons stated, the application for injunction must fail. It lacks merit. It is hereby dismissed with costs to the defendants.”

19. In applying the above decision to the circumstances of this case, this Court finds that the plaintiff's allegation that the suit property was sold way below its market value is not sufficient to warrant this Court to grant him an order of injunction. Accordingly, I find that an order for temporary injunction against the defendant in this case cannot issue.

Whether the defendant should be compelled to produce the proceedings of the auction conducted on 22nd May 2024 in respect to the suit property.

20. There is no evidence for request of the proceedings of the auction conducted on 22nd May 2024 in respect to the suit property by the plaintiff to the defendant, and that such a request was denied and/or ignored by the defendant, to warrant this Court's intervention. In addition, the defendant's production of the attendance sheet, Memorandum of Sale, and third party's transfer slips for the 25% deposit of the purchase price demonstrates good faith and willingness to co-operate and/or comply on the part of the defendant. I therefore agree with Counsel for the defendant that the request to compel the defendant to produce the auction proceedings of 22nd May 2024 in respect to the suit property is premature.
21. In the premise, I find that the plaintiff's application dated 24th March 2024 is devoid of merits. It is hereby dismissed with costs to the defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF JANUARY 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:



Ms Gitonga h/b for Ms Purity Makori for the plaintiff/applicant

Mr. Njoroge h/b for the defendant/respondent

Ms B. Wokabi - Court Assistant.

