



**Abdikadir & 3 others v Jorida Investments Limited & another (Commercial Case E778 of 2024) [2025] KEHC 1280 (KLR) (Commercial and Tax) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1280 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E778 OF 2024  
MN MWANGI, J  
FEBRUARY 14, 2025**

**BETWEEN**

**ISSACK ABDIKADIR ..... 1<sup>ST</sup> PLAINTIFF  
G7N PARTNERS LIMITED ..... 2<sup>ND</sup> PLAINTIFF  
ALLAN KAGIRI GIKONYO T/A ALANIS ENTERPRISES ..... 3<sup>RD</sup> PLAINTIFF  
JONAH MUKHWANA WEBALE, TREVOR MLONGO WEBALE T/A  
WEMBLEYS MOTOR MASTERS ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**JORIDA INVESTMENTS LIMITED ..... 1<sup>ST</sup> DEFENDANT  
DIAMOND TRUST BANK KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the second application that the plaintiffs have filed in this suit seeking orders of injunction.
2. The 1<sup>st</sup> one was dated 19<sup>th</sup> December 2024. I considered the said application on 14<sup>th</sup> January 2025 after the parties' Advocates made brief submissions and I declined to grant status quo orders –
3. In the present application, the plaintiffs seek the following orders
  1. Spent;
  2. That the Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants/respondents, their employees, agents, servants, assignees, or any person working under their express and/or implied instructions or authority from selling by public auction or private treaty, alienating, disposing, entering, leasing, appointing a Receiver, trespassing,



wasting, evicting the applicants or in any other way interfering with their quiet possession of all that property erected on Nairobi Land Reference Number 209/9278, Industrial area, Nairobi County pending the hearing and determination of this application and the application dated 19<sup>th</sup> December, 2024;

3. That the Honourable Court do issue an order maintaining the status quo of the suit premises pending the hearing and determination of the application herein and the application dated 19<sup>th</sup> December 2024.
4. The uncontested fact is that the plaintiffs are tenants of the 1<sup>st</sup> defendants. The contested fact is whether they were served with any Notice under Section 96 3(d) & (h) of the Land Act. The said provisions state as follows –
  1. Where a chargor is in default of the objections under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under Section 90(1), a chargee may exercise the power to sell the land.
  2. Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell.
  3. A copy of the notice to sell served in accordance with subsection 2 shall be served on –
    - a. ....
    - b. the holder of the land out of which the lease has been granted, if the charged land is a lease;
    - c. a spouse of the chargor who had given the consent
    - d. any lesse and sub-lesse of the charged land;
    - e. ....
    - f. ....
    - g. ....
    - h. any other person known to have a right to enter on and used the land or the natural resources, in, on, or under the charged land by affixing a notice at the property; and
    - i. .... (Emphasis added).
5. It is evident from the above provisions that the 2<sup>nd</sup> defendant should have notified the plaintiffs of its intention to sell the property scheduled for sale today.
6. The 2<sup>nd</sup> defendant has however not yet had an opportunity to file a response to the Notice of Motion dated 5<sup>th</sup> February 2025 so as to explain whether it complied with the provisions of Section 96(3)(d) & (h) of the Land Act.
7. When parties appeared before me on 14<sup>th</sup> January 2025 for mention of the earlier application dated 19<sup>th</sup> December 2024, Mr. Kisinga informed this Court that there was a previous suit, namely, HCCOMM. No. E113 of 2024 where Judge Visram rendered a ruling to the effect that the suit property therein could be sold. I note that the suit property in the said case is the same one as in the suit herein.



8. I have perused the ruling delivered by Judge Visram in the above case. The parties therein were Jorida Investments Limited v Diamond Trust Bank of Kenya. In the said case, the plaintiff therein is the 1<sup>st</sup> defendant in the application herein, and the defendant therein is the 2<sup>nd</sup> defendant herein. The plaintiffs in the application before me were not parties to the suit before Judge Visram. In HCCOMM No. E113 of 2024, the plaintiff therein who is the chargor, sought injunctive orders to stop the defendant (chargee) therein from selling the suit property. The plaintiffs herein are seeking injunctive orders to stop the sale of the suit property due to the 2<sup>nd</sup> defendant's alleged non-compliance with the provisions of Section 96(3)(d) and (h) of the Land Act.
9. In the brief submissions made before me, Mr. Kisinga stated that Section 103(1)(d) of the Land Act was repealed. It must however be noted that Mr. Moroga relied on the provisions of Section 96(3)(d) & (h) of the Land Act, and not on the provisions that Mr. Kisinga has referred to.
10. In the ruling uploaded by Judge Visram on the CTS on 26<sup>th</sup> June, 2024, in HCCOMM No. E113 of 2024, the Hon. Judge did not grant an order of injunction. Having applied my mind to the said ruling as well as the constitution of the parties in the suit therein, and bearing in mind the constitution of the parties in the present suit, and the issues of law that have been raised by the plaintiffs herein to the effect that as tenants of the 1<sup>st</sup> defendant, they were not served with a Notice or notified under Section 96(3) (d) & (h) of the Land Act of the intended sale by the 2<sup>nd</sup> defendant herein, the order that commends itself to me is to halt the sale of the suit property in the auction scheduled for today.
11. In the premise, I grant an interim injunction pending the hearing and determination of the applications dated 19<sup>th</sup> December 2024 and 5<sup>th</sup> February 2025.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Moroga for the plaintiffs/applicants

No appearance for the 1<sup>st</sup> defendant/respondent

Mr. Kisinga for the 2<sup>nd</sup> defendant/respondent

Ms B. Wokabi – Court Assistant.

**NJOKI MWANGI, J.**

