



**Erdeman Properties Ltd v Credit Bank Limited (Commercial Case E419 of 2022)
[2025] KEHC 2617 (KLR) (Commercial and Tax) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E419 OF 2022
A MABEYA, J
MARCH 12, 2025**

BETWEEN

ERDEMAN PROPERTIES LTD PLAINTIFF

AND

CREDIT BANK LIMITED DEFENDANT

RULING

1. The plaintiff moved this Court vide an application dated 5/7/2024 seeking the following orders: -

- a) Spent
- b) Spent
- c) The Honorable Court be pleased to order the defendant to produce before this court all and any documentation relating to the impugned auction that occurred on 5th June 2024 in relation to the purchase of LR 12867/13 Mavoko municipality including but not limited to the details of all the bidders, the offers of all bidders, the reserve price utilized in the auction and the statement of accounts evincing credit of the purchase price to the Plaintiff's account.
- d) The Honorable Court, ex-parte in the first instance, be pleased to issue an Order of temporary injunction restraining the Defendant, its agents, officers, assigns employees or anyone claiming under or through it howsoever from any interference with the Applicant and its tenants' quiet possession of the property comprising LR 12867/13 (IR 36277) Mavoko municipality including imposing a restraint on any onward sale, transfer or otherwise disposal of rights and interest in the subject property pursuant to the



impugned auction that occurred on 5th June 2024 pending the hearing and determination of the suit.”

2. The grounds for the application were set out in its body and the supporting affidavit sworn by Mr. Zeyun Yang, the plaintiff’s Managing Director.
3. The plaintiff contended that this Court is clothed with authority to issue the reliefs sought so as to preserve the suit property and prevent the ends of justice from being defeated. That the action of the defendant to exercise its power of sale was preceded by gross, dishonest conduct and brazen misrepresentation that obviated the impugned sale and that absent the grant of the reliefs sought, the suit runs the risk of being obviated and the defendant benefiting from its own unlawful conduct.
4. That the defendant will not suffer any prejudice if the orders sought are granted as the value of the suit property outweighs the principal debt owed by the plaintiff. That as such, this Court ought to preserve the status quo and bar the defendant until it can be ascertained whether the defendant breached its fiduciary duty to the plaintiff.
5. The last time this matter came up before me on the 18/7/2024, I directed that the application be responded to within 14 days however there is no evidence on record that the defendant complied with the said order.
6. I have considered the record. Firstly, the plaintiff seeks to be granted access to documentation related to the auction of the suit property that occurred on the 5/6/2024. Secondly, the plaintiff seeks an injunction to restrain the defendant from interfering with the suit property in any way including transferring the property or interfering with its quiet possession.
7. The question to be considered is whether this court has jurisdiction to grant the orders sought. Jurisdiction is so critical that it calls for a decision in limine. This is so whether or not parties to proceedings have raised it as was held in the oft cited case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR.
8. I do note that on three different occasions, the plaintiff unsuccessfully attempted to halt the defendant’s right to exercise its statutory power of sale thus leading to the auction that occurred on the 5/6/2024. I also note that the plaintiff lodged a Notice of Appeal on the 3/8/2023 against this Court’s decision of the 28/7/2023 that allowed the auction to proceed.
9. As previously noted in my ruling of 24/10/2023, in matters injunction, this Court became functus officio once it rendered its decision on the 28/7/2023. The only recourse the plaintiff had was to file an appeal. As such this Court is not clothed with jurisdiction to grant the orders of injunction sought by the plaintiff.
10. For purposes of clarity on the extent of leeway a court that is functus officio can act, I refer to the what the Supreme Court stated in *Raila Odinga & 2 Others vs. Independent Electoral & Boundaries Commission & 3 Others* [2013] eKLR. It held that: -

“According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter ... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive.”
11. As regards prayer (c) for the production of the documents relating to the impugned auction, that should be made during discovery and if the plaintiff has amended its plaint to challenge the auction. Not at this stage.



12. In view of the foregoing, it is my finding that the plaintiff's application dated 5/7/2024 lacks merit and is dismissed with costs.

It is so ordered.

SIGNED AT KISUMU THIS 26TH DAY OF FEBRUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH, 2025.

F. GIKONYO

JUDGE

