



**Oakdale Gardens Limited v Sichuan Huashi Enterprises & another (Commercial Case E289 of 2024) [2025] KEHC 4033 (KLR) (Commercial and Tax) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4033 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E289 OF 2024  
MN MWANGI, J  
MARCH 21, 2025**

**BETWEEN**

**OAKDALE GARDENS LIMITED ..... PLAINTIFF**

**AND**

**SICHUAN HUASHI ENTERPRISES ..... 1<sup>ST</sup> DEFENDANT**

**PHILLIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant filed a Notice of Motion application dated 28<sup>th</sup> May 2024 pursuant to the provisions of Order 40 Rule 1 & Order 50 Rule 1(1) of the Civil Procedure Rules, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act* and all enabling provisions of the law. The plaintiff prays for an order of injunction to restrain the defendants, their agents, or any other parties from transferring interest in all that property known as Dagoreti/Riruta/2699, now Nairobi Block 66/2699. The plaintiff also prays for an order compelling the 1<sup>st</sup> defendant to fully disclose all documents and communication related to the debt or charge, including the calculation of any outstanding amounts and a directive to rectify any errors or irregularities in the charge Agreement, including incorrect details of the chargor and miscalculations of interest or principal amounts, pending the hearing and determination of the suit.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. David Karanja Karau, the plaintiff's Managing Director. He averred that the applicant is the sole registered owner of the suit property and that it received a 45-day redemption notice from the 2<sup>nd</sup> defendant on 22<sup>nd</sup> March 2024, but the suit property is not subject to a mortgage or charge. He contended that the suit property was scheduled for sale by public auction on 31<sup>st</sup> May 2024 without legal and contractual compliance, and before adequately informing the plaintiff. Mr. Karanja



- asserted that the plaintiff has been engaged in a payment plan with the 1<sup>st</sup> defendant and remains committed to repaying any outstanding amounts. He claimed that the suit property is unique and essential to business operations, thus its loss would disrupt business operations, leading to irreparable financial and reputational damage.
3. In opposition to the application, the defendants filed a replying and further affidavit both sworn by Mr. He Wenbin, a Director of the 1<sup>st</sup> defendant company, on 6<sup>th</sup> June 2024 and 10<sup>th</sup> June 2024, respectively. Mr. Wenbin stated that the 1<sup>st</sup> defendant entered into a Partnership Framework Agreement with Kingspride Constructors Limited on 16<sup>th</sup> March 2017 to collaborate on government construction projects. He deposed that this was later varied on 25<sup>th</sup> September 2017, requiring the 1<sup>st</sup> defendant to pay Kingspride Constructors Limited 10% of the contract sum for projects introduced by the said company. He averred that the 1<sup>st</sup> defendant was the main contractor for Windsor Gardens Apartments, under an Agreement with Windsor Gardens Limited, but the contract was later terminated but there remained an outstanding sum of Kshs.37,030,500/= that was owed to the 1<sup>st</sup> defendant.
  4. Mr. Wenbin averred that the plaintiff deposited with the 1<sup>st</sup> defendant the suit property's Title deed as security for the debt owed by Windsor Gardens Limited, thereby creating an informal charge, an arrangement that was confirmed by a Board resolution on 7<sup>th</sup> March 2018. He deposed that the 1<sup>st</sup> defendant filed HCCOMM No. E110 of 2022 seeking to enforce the informal charge and was granted leave by the Court to sell the suit property to recover Kshs.37,500,000/=. That thereafter, the 1<sup>st</sup> defendant issued the plaintiff and Windsor Gardens with all the requisite statutory notices and then advertised the suit property for sale at an auction that was scheduled for 31<sup>st</sup> May 2024. Mr. Wenbin asserted that the plaintiff's non-disclosure of material facts invalidates its claims. He averred that the 1<sup>st</sup> defendant has incurred Auctioneers' fees of Kshs.616,249.77 and legal costs in defending this application, and in filing HCCOMM No. E110 of 2022, which costs should be incurred by the plaintiff herein.
  5. In a rejoinder, the plaintiff filed a supplementary affidavit sworn on 28<sup>th</sup> June 2024 by Mr. David Karanja Karau, the plaintiff's Managing Director. He stated that the plaintiff was not served with pleadings in HCCOMM No. E110 of 2022 and only became aware of the suit through the defendants' replying affidavit, but has since instructed its Advocates to challenge the ex parte orders issued therein. He further stated that of all the requisite statutory notices, the plaintiff only received a 45-days' redemption notice and a notification of sale both dated 22<sup>nd</sup> March 2024. He contended that despite knowing the plaintiff's email and physical address, the defendants opted to serve them via postal address, which service was never received. Mr. Karanja disputed that the suit property's valuation stating that it had been undervalued for the defendant's benefit and that the plaintiff had engaged an independent Valuer for a more accurate valuation.
  6. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed on 2<sup>nd</sup> July 2024 by the law firm of Mulinge & Ochieng Co. Advocates, while the defendants' submissions were filed by the law firm of Wamae & Allen LLP on 3<sup>rd</sup> July 2024
  7. Mr. Mulinge, learned Counsel for the plaintiff relied on the case of *Giella v Cassman Brown & Company Ltd* [1973] EA 358, and submitted that the plaintiff has made out a case to warrant being granted an order of temporary injunction. He cited the Court of Appeal case of *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125, and submitted that the debt leading to the redemption notice is owed by Windsor Gardens Limited, a separate entity from the applicant herein. In addition, he contended that the 1<sup>st</sup> defendant obtained Court orders to enforce an informal charge in HCCOMM No. E110 of 2023 without serving or involving the plaintiff. He asserted that the plaintiff will suffer



irreparable harm if the suit property is sold as it is crucial to the plaintiff's business operations. Counsel stated that the balance of convenience tilts in favour of the plaintiff.

8. Mr. Kigata, learned Counsel for the defendants submitted that the Court order in HCCOMM No. E110 of 2022 which allowed the sale of the suit property to recover Kshs.37,500,000 remains valid as it has not been set aside. He further submitted that the plaintiff was served with a 90-day statutory notice on 28<sup>th</sup> September 2023, a 40-day notice on 15<sup>th</sup> January 2024, and later a 45-day redemption notice, but neither the plaintiff nor Windsor Gardens Limited responded to the 1<sup>st</sup> defendant, or made repayment proposals. He stated that Trans Country Valuers Ltd assessed the suit property's market value at Kshs.54,500,000/= and forced sale value at Kshs.40,875,000/=, and that the suit property was advertised for auction in the Daily Nation of 20<sup>th</sup> May 2024, with the sale scheduled for 31<sup>st</sup> May 2024.
9. Mr. Kigata posited that the plaintiff had not provided a counter-valuation report to support its claim of undervaluation. He stated that the burden of proof lies with the plaintiff and that a mere disagreement on valuation is insufficient to stop the sale of the suit property. He cited the case of Charles Alex Njoroge v National Bank of Kenya Ltd & another [2015] eKLR, and stated that the defendants followed due process and the Valuation Report meets all legal requirements, making an order for injunction unwarranted. He asserted that the plaintiff will not suffer irreparable loss, as the property was offered as security and can be sold in the event of default. Counsel contended that any potential loss suffered by the plaintiff in the event that the orders sought are not granted can be compensated by an award of damages. Further, that the 1<sup>st</sup> defendant being a reputable company, is capable of doing so, and as such, the balance of convenience tilts in favour of the defendants.

#### **Analysis And Determination.**

10. I have considered the instant application, the grounds on the face of the Motion, and the supporting and supplementary affidavits filed in support thereof. I have also considered the replying and further affidavits by the defendants and the written submissions filed by Counsel for the parties. The issues that arise for determination are –
  - i. Whether the plaintiff has made out a case to warrant being granted an order for temporary injunction;
  - ii. Whether the 1<sup>st</sup> defendant should be compelled to fully disclose all documents and communication related to the debt or charge, including the calculation of any outstanding amounts; and
  - iii. Whether an order for rectification of any errors or irregularities in the charge Agreement, including incorrect details of the chargor and miscalculations of interest or principal amounts should issue.

#### **Whether the plaintiff has made out a case to warrant being granted an order for temporary injunction.**

11. Interlocutory injunctions are provided for under Order 40 Rules (1) (a) and (b) of the Civil Procedure Rules, 2010 which states as hereunder -

##### **Where in any suit it is proved by affidavit or otherwise-**

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or



- b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
12. The principles for interlocutory injunctions were laid out in the case of *Giella v Cassman Brown & Company Limited* (supra), where the Court held that -
- Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.
13. The plaintiff herein challenges the 1<sup>st</sup> defendant's power and/or right to sell the suit property on grounds that the said property is not subject to a mortgage or charge and that its sale was scheduled by public auction without legal and contractual compliance. The plaintiff contended that it had been engaged in a payment plan with the 1<sup>st</sup> defendant and remains committed to repaying any outstanding amounts.
14. The 1<sup>st</sup> defendant in opposition to the application stated that it was the main contractor for Windsor Gardens Apartments under an Agreement with Windsor Gardens Limited, but the contract was later terminated, leaving an outstanding debt of Kshs.37,030,500/= owed to the 1<sup>st</sup> defendant. It claimed that the plaintiff deposited with it the suit property's Title Deed as security for the said debt, thereby creating an informal charge. The 1<sup>st</sup> defendant averred that it filed HCCOMM No. E110 of 2022 to enforce the charge and was granted leave by the Court to sell the suit property to recover the said sum of Kshs.37,500,000/=. It then issued statutory notices to the plaintiff and Windsor Gardens Limited before advertising the suit property for sale by public auction on 31<sup>st</sup> May 2024.
15. I note that in as much as the plaintiff claims that it was not served with pleadings in HCCOMM No. E110 of 2022, the Court order in that case which recognized the creation of an informal charge and allowed the 1<sup>st</sup> defendant to exercise its statutory power of sale over the suit property to recover Kshs. 37,500,000/=, has not been varied or set aside. As a result, the said order remains valid and binding on the parties herein. As such, I cannot look into the validity or otherwise of the 1<sup>st</sup> defendant's right to exercise its statutory power of sale over the suit property.
16. The only issue for determination is whether the 1<sup>st</sup> defendant issued the plaintiff with all the requisite statutory notices before scheduling the suit property for sale. On perusal of the defendants' replying affidavit and the annexures thereto, it is evident that the 90 days' statutory notice dated 28<sup>th</sup> September 2023 provided for under Section 90 of the [Land Act](#) and the 40-days' statutory notice dated 15<sup>th</sup> January 2024 provided for under Section 96 of the [Land Act](#) were sent to the plaintiff and Windsor Gardens Limited on 28<sup>th</sup> September 2023 and 18<sup>th</sup> January 2024 respectively, via registered post.
17. In the absence of any one specific mode of service having been agreed upon between the parties herein, it is my finding that the 1<sup>st</sup> defendant was at liberty to serve the plaintiff with the notices under Sections 90 & 96 of the [Land Act](#) via registered post as long as the registered address that the notices were sent to belong to the plaintiff. It is noteworthy that in as much as the plaintiff averred that the said notices



ought to have been sent to its email address and/or physically delivered to its physical address, it does not dispute that the registered address to which the said notices were sent, belong to it. Additionally, the plaintiff acknowledged receipt of the 45 days' redemption notice and a notification of sale both dated 22<sup>nd</sup> March 2024, as provided for under Rule 15 of the Auctioneers Rules. In the circumstances, I am persuaded that the 1<sup>st</sup> defendant duly complied with the provisions of Sections 90 & 96 of the *Land Act*, 2012 and Rule 15 of the Auctioneers Rules before exercising its statutory power of sale over the suit property.

18. The 1<sup>st</sup> defendant has also demonstrated that it carried out a valuation exercise on the suit property before advertising it for sale. I note that in as much as the plaintiff has challenged the accuracy of the said valuation, no counter-valuation report has been produced by the plaintiff for consideration by this Court. The above notwithstanding, even if this Court was to find that the valuation relied on by the 1<sup>st</sup> defendant under-valued the suit property, this alone is not enough to warrant the plaintiff being granted an interlocutory injunction as in the event that the Court finds that the suit property was undervalued, after hearing the main suit, the plaintiff can be compensated by damages as provided for under Section 99(4) of the *Land Act*.
19. The Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (supra), defined what constitutes a prima facie case as follows -

So, what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.

20. In view of the foregoing analysis, it is my finding that the plaintiff has not established a prima facie case with a probability of success to warrant being granted a temporary injunction.
21. On the issue of damages, it is now well settled that a property offered as security becomes a commodity for sale in the event of default. See the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2013] eKLR, where the Court of Appeal agreed with the High Court's finding that damages could be an adequate compensation as the appellant's guaranteed security had been converted into a commodity for sale upon the same being charged to the respondent. In view of the foregoing, and the fact that the value of the suit property can be easily ascertained from Valuation Reports, it is my finding that the plaintiff does not stand to suffer irreparable damage that cannot be adequately compensated by an award of damages in the event that the instant application is not allowed, and if the plaintiff emerges successful in the main suit.
22. In the end, I am of the considered view that the balance of convenience tilts in favour of the defendants since the plaintiff can always be compensated by an award of damages in the event that its suit is successful.

**Whether the 1<sup>st</sup> defendant should be compelled to fully disclose all documents and communication related to the debt or charge, including the calculation of any outstanding amounts.**

23. This Court has already found that the Court in HCCOMM No. E110 of 2022 granted the 1<sup>st</sup> defendant the right to exercise its statutory power of sale over the suit property to recover Kshs.37,500,000/=. Since the said Order has not been varied or set aside, this Court cannot reconsider



issues regarding the debt or the charge, as they have already been determined on merits by a Court of competent jurisdiction. In any event, the plaintiff has neither alleged nor demonstrated that it sought for the information it seeks from the 1<sup>st</sup> defendant, and that it refused to honour such a request. This Court therefore finds that this issue is not open for determination by this Court.

**Whether an order for rectification of any errors or irregularities in the charge Agreement, including incorrect details of the chargor and miscalculations of interest or principal amounts should issue.**

24. I note that the plaintiff has neither alleged nor demonstrated that there are any errors or irregularities in the charge Agreement. Additionally, the Court in HCCOMM No. E110 of 2022 granted the 1<sup>st</sup> defendant the right to sell the suit property to recover Kshs.37,500,000/=, which Order has not been varied or set aside, thus it remains valid and binding. Therefore, just like the issue before this one, this Court cannot delve into issues in respect to errors or irregularities in the charge Agreement as they have already been fully determined by a Court of competent jurisdiction on merits. In the premise, I am of the considered view that this issue is also not open for determination by this Court.
25. The upshot is that the plaintiff's application dated 28<sup>th</sup> May 2024 is bereft of merits. It is hereby dismissed with costs to the defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF MARCH 2025.**

**RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Mr. Mulinge for the plaintiff/applicant

Mr. Kithinji h/b for Mr. Kigata for the defendants

Ms B. Wokabi – Court Assistant.

**NJOKI MWANGI, J.**

