



Stansha Limited v Cooperative Bank of Kenya & another (Commercial Case E116 of 2025) [2025] KEHC 2944 (KLR) (Commercial and Tax) (4 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E116 OF 2025**

PM MULWA, J

MARCH 4, 2025

BETWEEN

STANSHA LIMITED PLAINTIFF

AND

COOPERATIVE BANK OF KENYA 1ST DEFENDANT

REGENT AUCTIONEERS 2ND DEFENDANT

RULING

1. The ruling pertains to the Applicant's Notice of Motion dated 18th February 2025, seeking a temporary injunction to prevent the 1st and 2nd Respondents and their agents, from selling or dealing with the property LR No. 3734/635 (Converted to Nairobi, Block 13/250). Additionally, the Applicant requests an order for an independent land valuation and permission to redeem the property at its current value, instead of the total collateral sum of Kshs. 477,177,024.88.
2. The application is supported by an affidavit of Sharon Gathoni, sworn on 18th February 2025, who claims to be the rightful owner of the property and seeks to stop the Co-operative Bank of Kenya from selling it on 4th March 2025. She argues that no redemption notice was issued and that the bank is using an outdated and undervalued report (dated September 2023), which values the property at Kshs. 67,000,000.00 far below its 2016 purchase price of Kshs. 86,000,000.00 and a 2024 valuation of Kshs. 92,000,000.00. The Applicant wishes to redeem the property based on its original charge of Kshs. 63,000,000.00.
3. In response, Kennedy Odhiambo Otiato, an employee of the 1st Defendant (Special Assets Unit), filed a replying affidavit on 26th February 2025. He argues that the current application is res judicata and an abuse of the court process, as a similar application was filed in HCCOMM No. E399 of 2024, with



- the court ruling on it on 31st January 2023. Dissatisfied with that ruling, the Applicant filed an appeal (Civil Appeal No. E081 of 2025), which is still ongoing, thus making the current matter sub judice.
4. Otiato also asserts that the Respondent followed all statutory procedures, including issuing the necessary notices. He further claims that the current property valuation report is dated 26th February 2025.
 5. Having carefully reviewed the application, the affidavit and the oral submissions of counsel, the primary issue for determination is whether the application for a temporary injunction is merited, particularly in light of the legal objections raised by the Respondent.
 6. The Respondent has raised an important legal objection concerning the principles of res judicata and sub judice, which warrants careful consideration before addressing the merits of the application. The court cannot disregard this objection as it has been raised in the Respondent's replying affidavit. I must give due weight to this position, as it raises issues that are fundamental to the administration of justice.
 7. The principle of res judicata, enshrined in Section 7 of the [Civil Procedure Act](#), prohibits a court from adjudicating a matter that has already been decided by a court of competent jurisdiction. The question that arises is whether the matter in question in the current application is identical to the one previously adjudicated, and whether the outcome of that prior decision should preclude the Applicant from seeking a similar remedy.
 8. Upon reviewing the record, I observe that the subject matter in this application is substantially the same as that of the previous application dated 19th July 2024 in HCCOMM No. E399 of 2024. Both applications seek an injunction against the sale of LR No. 3734/635 (now converted to Nairobi Block 13/250). The core issue in both cases, therefore, is identical.
 9. As for the parties involved, it is notable that the Plaintiff and the 1st Defendant are the same in both applications. The only difference is that the 2nd Defendant, the auctioneer, is different in each case. In the earlier application, Westminster Commercial Auctioneers were named, whereas in the current application, Regent Auctioneers has been introduced. From the record, it is clear that Westminster Commercial Auctioneers continues to be the auctioneer handling the matter. The introduction of Regent Auctioneers appears to be a strategic attempt to broaden the scope of the application, effectively seeking to litigate the same issues under a slightly altered framework. This cannot circumvent the doctrine of res judicata, as it is well-established that parties cannot avoid its application merely by adding new parties or causes of action (See [Omondi v National Bank of Kenya Limited and Others](#) (2001) EA 177).
 10. The next issue to consider is whether the previous suit, in which the application was filed on 19th July 2024, was concluded by a court of competent jurisdiction. The application was heard and determined on 31st January 2025, where the court ruled that no prima facie case was demonstrated. It is therefore clear that the issue raised in this application has already been considered by the court. Given the court's decision to reject the Applicant's request for an injunction, it is my conclusion that the present application bears elements of res judicata and, as such, ought to be struck out.
 11. The Respondent further raises the issue of sub judice, a principle defined in [Black's Law Dictionary](#) (9th Edition) as referring to a matter that is "before a court for determination." Sub judice, as articulated in Section 6 of the [Civil Procedure Act](#), prevents a court from proceeding with the trial of a suit if the matter in issue is substantially the same as one pending before a court of competent jurisdiction.
 12. Both the current and the prior applications challenge the statutory power of sale by the bank and seek an injunction against the sale of the property. The reliefs sought in both applications are identical, save



- that in the instant application the Applicant seeks to have an independent valuer and to redeem the loan facility. Given that the issue of the injunction is substantially similar, the decision made by this court in the earlier application should be binding and does not warrant re-examination.
13. The Applicant, dissatisfied with the ruling of 31st January 2025, filed an appeal to the Court of Appeal, where the matter is currently pending. Since the issues in the present application were already fully dealt with by this court, any attempt to re-litigate them here is improper and may amount to an abuse of the judicial process. The arguments of the suit property being matrimonial property as well as service of the statutory notices were conclusively dealt with in the ruling of 31st January 2025.
 14. In *Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga* (2013) eKLR, the court held that:

“...it is not the form of the suit that determines whether it is sub judice, but rather the substance of the case.”
 15. It is clear that the issues in both applications are substantively identical, and there is no justification for having two parallel proceedings on the same matter. This would only lead to unnecessary duplication of judicial work and the risk of conflicting decisions.
 16. Based on the foregoing considerations, it is clear that the present application is precluded by both the doctrines of res judicata and sub judice. The Applicant has already had an opportunity to present their case for an injunction, and the matter is currently pending before the Court of Appeal. As such, this court cannot revisit or entertain the same issues while the appeal remains unresolved. To do so would amount to a duplication of efforts and the potential for conflicting judgments.
 17. In light of the above, I find that the Applicant's motion for a temporary injunction constitutes an abuse of the court process, and the same must fail. The upshot is that I find the Applicant's Notice of Motion dated 18th February 2025 bereft of merit and is dismissed with costs to the Respondents.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Momanyi for Plaintiff/respondent

Ms. Muraguri for 1st Defendant/applicant

Court Assistant: Carlos

