



**Waguta v Equity Bank Limited & another (Civil Case
12 of 2023) [2025] KEHC 3368 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL CASE 12 OF 2023
CW GITHUA, J
MARCH 19, 2025**

BETWEEN

ERASTUS KANGETHE WAGUTA APPLICANT

AND

EQUITY BANK LIMITED 1ST RESPONDENT

STARTRUCK AUCTIONEERS 2ND RESPONDENT

RULING

1. This ruling is in respect of the applicant's Notice of Motion dated 19th December 2023. The first two prayers are already spent and what is pending this court's determination are the following prayers:
 - (i) That the court be pleased to issue a temporary injunction to restrain the respondents by themselves, servants, agents and legal representatives from transferring, alienating, disposing and or otherwise dealing in any other manner the plaintiff's property, namely, LOC 15/ Kimathe/3167 located along Sagana road, Murang'a County, pending hearing of the main suit;
 - (ii) That this court be pleased to issue a permanent injunction to restrain the respondents by themselves, servants, agents and/or legal representatives from transferring, alienating, disposing, and/or otherwise dealing in any other manner the plaintiff's property namely, LOC 15/Kimathe/3167.
 - iii. That an order be issued for nullification and/or cancellation of the sale of land parcel no. LOC 15/Kimathe/3167 (the suit land) conducted by the 2nd respondent;
 - iv) That the respondents be ordered to auction the suit land with the current market value of Kshs. 21, 000, 000;
 - v. That the respondents be compelled to produce all documents relied upon and proceedings of the auction in respect of the suit land.



- vi. General damages;
 - vii) That costs of the suit and interest be provided for.
2. The application is anchored on the grounds stated on its face and the depositions made in the supporting affidavit sworn by the applicant on 19th December 2023. Briefly, the applicant deposed that he is the registered owner of the suit land which he used as collateral for a loan facility advanced to him by the 1st respondent in the sum of Kshs. 8, 400,000. That on the 27th July 2023, he received a redemption notice and notification of sale of his property which did not indicate the value of the property as required by Rule 15 of the Auctioneers Rules, 1997.
 3. He averred that the 1st respondent declined his request to find a valuer who would quote the best reasonable price for the intended sale of the suit land and also failed to inform him of the date of the auction; that nevertheless, the 2nd respondent proceeded to auction the property at a grossly understated price of Kshs. 9,000,000; that a 10% deposit of the purchase price was paid but transfer of title to the purchaser was yet to be effected.
 4. The applicant further stated that, at his instance, the suit land was valued by Ni-Light Consultants Ltd and as per their valuation report dated 5th December 2023, the land was valued at Kshs. 21,000,000; that he had purchased the suit land in the year 2018 at a purchase price of Kshs. 13, 500,000 and it was not possible that its value could have depreciated over the years. In a nutshell, it was the applicant's case that the 1st respondent irregularly and unlawfully exercised its statutory power of sale thereby foreclosing his equity of redemption.
 5. The application was contested through a replying affidavit sworn on 6th February 2024 by Mr. Samuel Wamaitha on behalf of both respondents. Briefly, Mr. Wamaitha denied the applicant's contention that the auction in which the suit land was sold was irregular or unlawful. He deposed that the applicant, being a director of Buildel Enterprises Ltd, gave a personal guarantee for a loan of Kshs. 9,500,000 which was advanced to the company by the 1st respondent. The personal guarantee was supported by an existing legal charge of Kshs. 8,400,000 secured vide the suit land.
 6. The deponent further averred that despite several demands, the applicant had defaulted in repayment of both the principal sum and interest and that as at 20th July 2023, the sums outstanding stood at Kshs. 12, 881, 705.90. He further deposed that the 1st respondent had fully complied with the applicable law and had served the applicant with all the requisite statutory notices before exercising its statutory power of sale by way of a public auction which was conducted by the 2nd respondent on 8th November 2023.
 7. Additionally, the deponent contended that the applicant had not made any attempt to settle his indebtedness to the 1st respondent even after obtaining interim orders from this court; that the instant application and indeed the entire suit were aimed at frustrating the 1st respondent and delaying it from recovering the monies lawfully owed to it by the applicant.
 8. According to the respondents, the applicant had not made out a prima facie case with a probability of success to warrant being granted the orders sought neither had he demonstrated that he was likely to suffer any loss that cannot be adequately compensated by way of damages should the 1st respondent exercise its statutory power of sale. It was the respondent's contention that the application amounted to an abuse of the court process and the same ought to be dismissed with costs.
 9. The application was canvassed by way of written submissions which both parties duly filed and which I have carefully considered together with the affidavits filed in support and in opposition to the



application. Having done so, I find that the only issue arising for my determination is whether the orders sought in the application were merited.

10. Starting with the prayer for orders of permanent injunction to restrain the respondents from transferring, alienating, disposing off or otherwise dealing with the suit land; the prayer seeking nullification of sale of the suit property; the prayer that the respondents be ordered to auction the suit land at the alleged market value of Kshs. 21, 000, 000 and the prayer for general damages, a perusal of the plaint dated 19th December 2023 which instituted suit against the respondents reveals that the applicant has sought similar orders in the main suit. By seeking the same reliefs at this interlocutory stage, the applicant was inviting this court to make final orders which would have the effect of prematurely disposing off the suit at this stage without having heard both parties on the merits or otherwise of the suit.
11. The Court of Appeal in *Kenya Deposit Insurance Corporation v Richard and David Limited & Another*, civil appeal 66 of 2016, [2015] KECA 4 expressed itself as follows on the above subject:

“...It is in our jurisprudence that a Court will not at a preliminary stage determine with finality contested issues in litigation.....Excepting where there are special circumstances, it is wrong for a Judge to grant at an interlocutory stage of proceedings final orders, thus disposing of the suit before parties are heard. The right to be heard is fundamental and only in extremely rare circumstances will a court of law issue orders the effect of which is to determine the suit with finality or to render the suit superfluous.”

See also: *Olive Mwhaki Mugenda & another v Okiya Omtata Okoiti & 4 others* [2016] eKLR.

12. Applying the above principle to the present case, I find that the orders sought in the above four prayers are not available to the applicant at this stage. The same will have to await hearing of evidence in the main suit after which the court will make its final determination on their merits one way or the other.
13. Regarding the applicant’s prayer for an interlocutory injunction pending hearing and determination of the suit, the principles governing the grant of such injunctions are well settled. The same were articulately espoused in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] EA 358. To be deserving of orders of temporary injunction, a party must meet the conditions set out in the above case which are that he must establish a prima facie case with a probability of success; demonstrate that if the orders sought were not granted, he was likely to suffer irreparable injury or loss that cannot be adequately compensated by an award of damages or that the balance of convenience tilted in his favour.
14. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] KECA 606 (KLR) held that the above three conditions must be applied as separate, distinct and logical hurdles which the applicant must surmount sequentially before being entitled to orders of interlocutory injunction. The court expressed itself as follows;

“...If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a



prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

15. A prima facie case was defined by the Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR as a case in which on the material presented to the court, a tribunal properly directing itself would conclude that there existed a right which had apparently been infringed which would justify calling for an explanation or a rebuttal from the opposite party and that there was a chance of success of the applicant’s case upon trial.
16. In this case, the applicant has admitted having obtained a loan facility from the 1st respondent using the suit land as collateral. The applicant has also not denied having defaulted in repayment of the principle sum advanced plus interest and that his indebtedness to the 1st respondent stood at Kshs. 8,885, 275.85 at the time he was served with the statutory notice and notification of sale.
17. From the material placed before me, the applicant’s main grievance is not that the 1st respondent’s right to exercise its statutory power of sale had not crystalized at the time the suit land was sold by public auction but that the property was undervalued and was sold at a forced value of Kshs. 9,000,000 which was allegedly way below its market value; that the 1st respondent therefore breached the duty of care imposed upon it by Section 97 (1) of the *Land Act*, which required it to find the best price reasonably obtainable at the time of sale.
18. To buttress this claim, the applicant claimed that he had bought the suit land in the year 2018 for a sum of Kshs. 13, 500, 000 as shown in the sale agreement marked as “EKW5” and that by the time it was sold, its market value had appreciated to Kshs. 21, 000, 000 as shown in the valuation report prepared by Ni-Light Consultants Ltd.

However, a perusal of the aforesaid sale agreement shows clearly that it related to land known as LR. Loc 15/ Kimathe 68 and not the suit land.
19. It is not disputed that the 1st respondent undertook a valuation of the suit land before exercising its statutory power of sale as obligated by Section 97 (2) of the *Land Act*. The valuation report by Wamae Mureithi & Associates dated 18th August 2023 shows that the suit land was inspected on 11th August 2023 and after valuation, its market value was found to be Kshs. 12, 000, 000 while its forced value was Kshs. 9,600,000.
20. Given the foregoing, it is clear that other than the valuation report by Ni-Light Consultants Ltd indicating that the suit property had a market value of Kshs. 21,000,000 as at 5th December 2023, there is nothing else on record to support the applicant’s claim that it was grossly undervalued at the time the 1st respondent exercised its statutory power of sale. Contrary to the submissions made by the applicant, it is my finding that the existence of two different dates in the valuation report by Wamae Mureithi & Associates was not by itself sufficient evidence to discredit, prima facie, the veracity of the report. As matters now stand, there is nothing on record to prove which of the two valuation reports represented the true or actual value of the suit land at the material time.
21. . Having considered the application and the material placed before me in its entirety, I find that the applicant has raised an arguable point that the valuation obtained by the 1st respondent may have been a negation of its duty to obtain the best price possible at the time the suit land was sold but needless to state, establishment of a prima facie case especially in a case like the present one in which default is not denied requires more than a demonstration of existence of an arguable case.



22. . Drawing from my finding above, I am satisfied that in this case, the applicant has failed to establish a prima facie case that would warrant the grant of an order of an interlocutory injunction on terms sought in the application.
23. In any event, the applicant has not demonstrated that if the orders sought were not granted, he was likely to suffer injury or loss that cannot be adequately compensated by an award of damages. As shown in the two conflicting valuation reports, the value of the suit land can be quantified in monetary terms and if title to the property was transferred to the highest bidder and the applicant was eventually successful in the main suit, he can be sufficiently compensated by an award of general damages which is one of the prayers sought in the suit.
24. Lastly, the applicant has also prayed that this court compels the respondents to produce all the documents and proceedings of the auction done in respect of the suit land. This prayer is in my view premature since the applicant has not alleged or claimed that he had requested the respondents to supply him with the above information and they had failed or refused to accede to his request. Further, despite its age, and for reasons that are on record, this case is unfortunately still in its preliminary stages and parties are yet to comply with pre-trial procedures and requirements stipulated in the Civil Procedure Rules.
25. For all the foregoing reasons, I am persuaded to find that the applicants Notice of Motion dated 19th December 2023 is devoid of merit and the same is hereby dismissed with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 19TH DAY OF MARCH 2025.

HON. C. W. GITHUA

JUDGE

In the presence of :

Ms. Murila for the Applicant

Ms. Swaka for the Respondents

Ms. Susan Waiganjo, Court Assistant

