



Sirigon Security Limited & another v Letshego Kenya Limited & another (Miscellaneous Civil Appeal E003 of 2025) [2025] KEHC 4185 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CIVIL APPEAL E003 OF 2025
JK NG'ARNG'AR, J
APRIL 3, 2025**

BETWEEN

SIRIGON SECURITY LIMITED 1ST APPELLANT

KIBET KIRUI JACKSON 2ND APPELLANT

AND

LETSHEGO KENYA LIMITED 1ST RESPONDENT

SURE AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicant has moved the court by the Notice of Motion dated 28TH January, 2025. the application is premised on the provisions of sections 1A, 3 and 3A of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya), Order 10, rule 11, 22, 6, 51 rule 6 of the *Civil Procedure Rules* and Article 19,25(C), 27,29 and 50 the *Constitution*. they seek the following orders:
 - a. spent
 - b. spent
 - c. That pending the hearing and determination of the appeal, this court be pleased to issue stay of sale of land parcel known as Kericho/Itembe/3456 scheduled for 29th January, 2025 by way of public auction by Sure Auctioneers.
2. The application is grounded on the supporting affidavit of Kibet Kirui Jackson sworn on 28th January, 2025. The applicant contends the court did not find that the applicants were not served with a mention notice despite there being an order for service of the same but proceeded to hold in favor of the Respondent.



3. The issues for determination is whether the threshold for the issuance of the orders sought in the applications has been met.
4. It cannot be gainsaid that the court had jurisdiction to issue temporary injunctions due to its inherent powers. This jurisdiction must be exercise judiciously and in this regard the factors the court may take into account are various.
5. This court in [Julius Musili Kyunga v Kenya Commercial Bank Limited & another](#) [2012] eKLR held that:

“(8) This court had opportunity to consider the issue of the principles for the grant of injunction pending appeal in a ruling on Preliminary Objection in Mombasa HCCC 235 of 2010 *D.J. Lowe & Co. Ltd v Credit Agricole Indosuez & 3 others* the court stated follows:

“Although Order 42 rule 6 of the Civil Procedure Rules does not expressly provide for application for injunction pending appeal the same is, in accordance with the authorities, part of the body of common law, doctrines of Equity and procedure and practice of Courts of Justice in England as incorporated in Kenya by virtue of section 3 (1) of the [Judicature Act](#), Cap. 8 Laws of Kenya, and in the absence of express procedure rules, the inherent jurisdiction of the Court under Section 3A of the [Civil Procedure Act](#) provides a basis for applications for injunction pending appeal in accordance with principles set out in relevant case law authorities. Indeed, the Court of Appeal of Kenya has adopted the principles notably in *Bhutt v Rent Restriction Tribunal* CACA No 6 of 1979 and *Madbupaper International Ltd v Paddy Kerr* (1985) KLR 840. The Court of Appeal Rules do however provide for injunction pending appeal under Rule 5 (2) (b) of the Rules.”

(9) The object of the injunction pending appeal is to preserve the subject matter to ensure that the appeal, if successful, will not be rendered nugatory.....”

6. This court understands that the discretion to grant an injunction pending appeal must be exercised judicially and carefully in the light of the circumstances of each case. In the present matter the court is not convinced as to the probability of success and substantial loss on balance of probability.
7. What constitutes a *prima facie* case was explained by the Court of Appeal in [Mrao Ltd v First American Bank of Kenya Limited and 2 others](#) [2003] eKLR as follows:

“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 to call for an explanation or rebuttal from the latter.”
8. As to whether the court should grant an injunction, the courts discretion is governed by the principles in *Giella v Cassman Brown* [1973] EA 348. The Plaintiffs must demonstrate that they have a *prima facie* case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in their favour. The Court of Appeal in [Nguruman Limited v Jane](#)



Bonde Nielsen and 2 Others NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, added that these requirements are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially.

9. The Plaintiffs bear the burden of showing that they are entitled to an injunction. The fact that the mention notice was not served does not entitle them to an automatic injunction. From the application and depositions, they do not complain that the Respondent's statutory power of sale has not arisen. There is also nothing in their depositions that shows that the 1st Respondent contravened any provisions of the Land Act, 2012 in issuing the notices which are not controverted. Their complaint as I understand, is that they were not served with a mention notice hence were aware of the court's proceedings. The courts have held from time to time that the court will not issue an injunction to restrain a chargee from exercising its statutory power of sale on account of a disputed debt (see Mrao Ltd v First American Bank of Kenya Limited and 2 Others [2003]eKLR and National Bank of Kenya v Juja Coffee Exports Limited [2021]eKLR). I hold that the Appellants have not made out a case for the grant of an injunction. An injunction will not be granted merely because a mention notice was not issued. It is always stated that equity favors the vigilant and not the indolent. In any case the Appellant can be compensated by way of damages should the appeal succeed.
10. I have read the ruling by the lower and duly noted the contents therein and I find no justifiable reason to digress from the same.
11. For the reasons I have set out, I disallow the application dated 28th January, 2025 and the ruling by Hon. M. Michuki issued in civil case No. E179/2023 is hereby sustained. The costs of the application shall be in the cause.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 3RD DAY OF APRIL, 2025.

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered, No appearance for the Applicant Terer for the Respondent and Siele/Susan (Court Assistants).

