



Gulf Africa Bank Limited v Elite Intelligent Transport Systems Limited (Civil Case E265 of 2023) [2025] KEHC 7257 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E265 OF 2023
JWW MONG'ARE, J
MAY 26, 2025**

BETWEEN

GULF AFRICA BANK LIMITED PLAINTIFF

AND

ELITE INTELLIGENT TRANSPORT SYSTEMS LIMITED DEFENDANT

RULING

1. On 9th June 2023, the Plaintiff vide Originating summons moved this Honourable Court filed under Section 90(3) of the *Land Act* No. 6 of 2012, Sections 1A,1B, 3, 3A of the *Civil Procedure Act*, Order 37 Rule 14 of the *Civil Procedure Rules* seeking the following orders: -
 - a. The Defendant by himself, tenants/servants and or/or agents or any other occupants do forthwith deliver and give vacant possession of the property Land Reference Number 1160/339(Original Number 1160/178/3) to the Plaintiff and or its appointed agent to facilitate the completion of the exercise of the Plaintiff's statutory power of sale.
 - b. Alternatively, to prayer (a) above, the Defendant, his servant, agents or any other occupants be forcefully evicted from the subject premises should they fail to deliver vacant possession within fourteen (14) days from the date of the Order of this Honourable Court.
 - c. The OCS Karen Police Station or any other Police Station with jurisdiction to implement or supervise the implementation of the forceful eviction of the Defendant and or its authorized agents and or servants from the suit property.
 - d. The Defendant do bear costs of this application.
2. The Originating Summons is supported by the grounds set out within it and the supporting affidavit of Lawi Sato sworn on 9th June 2023. It is opposed and the Respondents have filed a replying affidavit



sworn by Patrick Mwangi Kibaiya. On 25th March 2024, the Respondent filed a Notice of Motion application but subsequently on 27th March 2024, filed a Notice of withdrawal of the said motion. The withdrawal was done despite the court having on 11th April 2024 issued *ex parte* orders to the same, which the court notes were not complied.

3. The court is called to determine the Originating summons herein filed on 9th June 2023 alongside a Notice of Motion application filed on the same date seeking ostensibly the same orders as those sought in the Originating Summons. The record reveals that the Respondents filed a replying affidavit to the said motion and a preliminary objection that sought to challenge the jurisdiction of this court. This Application and the Preliminary Objections were determined by this court by a ruling issued on 26th January 2024 and the court found the application to be merited. Notably, when the court directed the parties to file written submissions to the Originating summons, a perusal of the record reveals that only the Plaintiff has filed their submissions which I have carefully considered.
4. The Plaintiff has asked this court to order that the Defendants do vacate the suit premised on land Reference No. Land Reference Number 1160/339(Original Number 1160/178/3) as they are inhibiting the Chargee from accessing the same pursuant to its statutory power of sale which the courts have determined has accrued under the charge. The Plaintiff urges the court to be guided by the courts decision in the case of *Patrick Gitbinji Ndichu & 2 others vs Equity Bank (Kenya) Limited & Another* (2021) eKLR where the court in ordering the Chargee to be granted vacant possession stated as follows:-

“The Applicants have been able to demonstrate that there has been default. That the requisite notices have been issued. That the 1st Applicant’s statutory power of sale has arisen. That the contract between the parties entitles the 1st Defendant to gain entry to the suit property. That is one of the legal remedies provided for by the law”.

5. As stated earlier in this ruling the court found that indeed the Plaintiff was entitled to gain access to the suit premises in order to conduct valuation for purpose of determining its value in order to proceed with the exercise of its now vested statutory power of sale and despite the court directing that the process be facilitated by the OCS Karen Police Station in its orders of 26th January 2024, the same did not materialize as the Defendants continue to frustrate and deny egress to the Plaintiff’s agents to the suit property. I am therefore persuaded that Originating Summons filed on 9th June 2023 has merit and I allow the prayers sought therein.
6. The upshot of the above findings I make the following dispositive orders:-
 - a. The Defendant by himself, tenants/servants and or/or agents or any other occupants is hereby ordered to forthwith deliver and give vacant possession of the property Land Reference Number 1160/339(Original Number 1160/178/3) to the Plaintiff and or its appointed agent to facilitate the completion of the exercise of the Plaintiff’s statutory power of sale within 30 days from the date hereof.
 - b. If the said vacant possession is not delivered within 30 days of these orders, the Defendant, his servant, agents or any other occupants be forcefully evicted from the subject premises within fourteen (14) days from the date of the order of this Honourable Court.
 - c. The Inspector General of the National Police Service through Officer Commanding Station-Karen Police Station (OCS) or any other Police Station with jurisdiction, as shall be directed by the Inspector General of the National Police Service, do implement or supervise the



implementation of the forceful eviction of the Defendant and or its authorized agents and or servants from the suit property.

d. That costs of this application are awarded to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2025

.....
J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Ogunde for the Plaintiff.

Mr. Davidson Makau for the Defendant.

Amos - Court Assistant

