



REPUBLIC OF KENYA



**Mango v Stanbic Kenya Limited & another (Civil Suit E466 of 2023)
[2025] KEHC 5631 (KLR) (Commercial and Tax) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5631 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E466 OF 2023
JWW MONG'ARE, J
MAY 5, 2025**

BETWEEN

ALFRED OGALO MANGO PLAINTIFF

AND

STANBIC KENYA LIMITED 1ST DEFENDANT

AMINA MOHAMED 2ND DEFENDANT

RULING

1. On 29th November 2024, the 2nd Defendant moved this Honourable court by a Notice of Motion application brought under a Certificate of Urgency and filed under Sections 3, 3A and 63 of the [Civil Procedure Act](#), Order 40 Rule 1 and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeking the following orders:-
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of the suit an order of injunction do issue against the Plaintiff, his agents, personal representatives or any other person acting under his instructions barring him from interfering in any way with the quiet possession of her property known as Apartment No. 5 on 3rd Floor, Block B erected on Land Reference No. 2/713(original number LR. No.2/708)(“Suit Premises”)
 - iv. That the orders herein be enforced and implemented by the Officer Commanding Station(OCS), Kilimani Police Station.
 - v. That costs of this application be provided for.



2. The application is supported by the grounds set out on its face and the supporting affidavit of Amina Mohamed sworn on 29th November 2024. It is opposed and the Plaintiff/Respondent has filed a replying affidavit sworn on 17th December 2024. The 1st Defendant did not oppose the application and hence did not file any pleadings. Both the Applicant and the Respondent filed their written submission on the directions of this court.
3. From the record the court notes that this court by a ruling delivered to the parties on 6th September 2024, dismissed an application by the Plaintiff filed on 21st September 2023 seeking to restrain the Defendants from taking over vacant possession of the suit premises and allowed an application by the Defendants filed on 28th November 2023 seeking that the Plaintiff yield vacant possession to the 2nd Defendant of the suit premises.
4. A reading of the pleadings filed herein ostensibly means that the Plaintiff having lost the motion to stop the Defendants from taking possession of the suit premises, has failed to comply with the orders of this court and has illegally and without justifiable cause continued to deny the Applicant access to the suit premises. I note from his response, the Plaintiff argues that the primary suit between the parties is yet to be determined and hence his reluctant to vacate the suit premises. I note that the Plaintiff further argues that he has moved to the court of appeal to challenge the ruling of this court. In response to that averments the Applicant has deponed that the Court of Appeal has dismissed the application for stay pending appeal and hence there is no order restraining the implementation of the orders issued by this court to the parties.
5. By its ruling delivered to the parties on 16th September 2024, the Court allowed the application by the 2nd Defendant that sought the following orders:-
 1. That the application be heard *ex parte* in the first instance for reasons of its urgency.
 2. That this Honourable court do and hereby vacate the orders granted in favour of the Plaintiff dated 21st September 2023, and the matter slated for a full hearing at the soonest opportune moment.
 3. That in the event the interim orders are extended then the Plaintiff/Respondent be required to deposit adequate security to secure any losses or damage occasioned to the Applicant/2nd Defendant, pending the hearing and determination of this application.
 4. That in the alternative the interim orders herein be extended on condition that the Plaintiff/Respondent do deposit the sum of Kshs.150,000/= per month dating back from 1st September ,2023 to adequately cover for loss of rent thereon over the suit premise,pending the hearing and determination of this application.
 5. That in the event the interim orders are extended then the Plaintiff/Respondent be required to deposit adequate security to secure any losses or damage occasioned to the Applicant/2nd Defendant, pending hearing and determination of the suit.
 6. That in the alternative the interim orders herein be extended on condition that the Plaintiff/Respondent do deposit the sum of Kshs.150,000/= per month dating back from 1st September ,2023 to adequately cover for loss of rent



thereon over the suit premises, pending the hearing and determination of the suit.

7. That this court do issue further orders as may deem just and fit in the circumstances.
 8. That costs of this application be awarded to the Applicant/2nd Defendant.”
6. The court declined to extend the interim orders and allowed the 2nd Defendants application as prayed. In opposing the present application, the Plaintiff argues that allowing the 2nd Defendant to take possession of the suit premises is tantamount to allowing the main suit without giving the Plaintiff an opportunity to be heard on the issues sought in his Plaint. I have looked at the Plaint as filed. I note that the Plaintiff has prayed for among others, a declaration that the sale by public auction and the subsequent transfer of the suit premises is illegal, null and void and an order for its cancellation.
7. It follows therefore that the Plaintiff is aware that the suit premises were sold and transferred to the 2nd Defendant hence the reasons that he seeks the said declaratory reliefs in his suit. I have looked at the material provided by the parties in pursuit of this application. I have not seen annexed any orders from the Court of Appeal reversing the orders of this court. As stated in the case of Jacob Zedekiah Ochino & Another v George Aura Kombo & 4 Others (1989) eKLR , cited by the Applicant in her submissions before this court“ The courts cannot condone deliberate disobedience of its orders, and they will not shy away from their responsibility to deal firmly with contemnors. The rule of law cannot be maintained if parties are allowed to disobey court orders with Impunity.”
8. I note that in the present application, the Applicant has not applied to have the Plaintiff cited for contempt. The Application seeks to bar the Plaintiff from interfering with the quiet possession of the suit premises by the Applicant, pending the hearing and determination of the Plaintiff’s suit. The Plaintiff is well aware that there is no order restraining the Defendants from taking possession. To refuse to allow the Applicant to take possession amounts to the Plaintiff selectively electing what part of the orders of this court he wishes to comply with. I direct that as the Plaintiff awaits the determination of the suit, the 2nd Defendant be allowed possession of the suit premises forthwith in compliance with the earlier orders of this court.
9. I therefore find that the present application has merit and I will allow it. I direct that the 2nd Defendant/ Applicant be allowed with the assistance of the OCS, Kilimani Police Station to take immediate vacant possession forthwith of the suit premises. I award costs of this application to the 2nd Defendant. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2025

J.W.W. MONG’ARE

JUDGE

In the Presence of:-

1. Mr. Osumba for the Plaintiff.
2. Mr. Onyango for the 1st Defendant.
3. Mr. Ochieng for the 2nd Defendant.
4. Amos - Court Assistant

