



**LBN v AK & another (Matrimonial Cause E001 of 2025)
[2025] KEHC 10440 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MATRIMONIAL CAUSE E001 OF 2025
RN NYAKUNDI, J
JULY 16, 2025**

BETWEEN

LBN APPLICANT

AND

AK 1ST RESPONDENT

MWANANCHI CREDIT LIMITED 2ND RESPONDENT

RULING

1. What is pending before this court for determination is Notice of Motion Application dated 20th February 2025 in which the Applicant is seeking the following orders:
 - a. Spent
 - b. That temporary injunction order do issue barring the 2nd Respondent from exercising its statutory power of sale as per notice issued to the 1st Respondent on 6/01/2025 against the charged property, land reference number Eldoret Municipality Block 8/589 together with the building sitting on the land, the building's fixture, fitting, additions and improvements from time to time forming part of the land and its surrounding pending the hearing and determination of this application inter partes.
 - c. That temporary injunction order do issue barring the 2nd Respondent from exercising its statutory power of sale as per notice issued to the 1st Respondent on 6/01/2025 against the charged property, Land Reference Number Eldoret Municipality Block 8/589 together with the building sitting on the land, the building's fixtures, fitting, additions and improvements from time to time forming part of the land and its surrounding pending the hearing and determination of originating summons.
 - d. That costs be in the cause.



2. The Application is based on the following grounds among others: -
 1. The Plaintiff is the wife of the 1st Respondent.
 2. Land known as Eldoret Municipality Block 8/589 was purchased jointly by the Petitioner and the 1 Respondent during their marriage.
 3. The 1st Respondent without the knowledge of the Plaintiff/Applicant offered the subject land known as Eldoret Municipality Block 8/589 as security for a loan advanced by the 2nd Respondent.
 4. The 2nd Respondent has given notice to sell the land Eldoret Municipality Block 8/589 to realize the amount owing from the 1st Respondent.
 5. The Plaintiff/Applicant stands to suffer irreparable loss of her property unless the orders sought are granted.
3. The Application is supported by the annexed affidavit dated 20th February 2025 sworn by LBN whose averments echo the grounds in support of the application.

Decision

4. The history of this litigation is traceable to the decision made by this court in HCC No. E003 of 2023. In the legal context these two case dockets can be said to be cases with similar facts essentially referring to situations where the court ruling in E003 of 2023 may serve as a precedent or persuasive authority for resolving this latter case with comparable facts and legal issues. This principle known as a stare decisis meaning to stand by things decided is a cornerstone of common legal system, in which Kenya is one of them as an enabler of promoting consistency and predictability in legal outcomes.
5. Incidentally, I was involved in the prior court decision in E003 of 2023 and as fate will have it the 1st Respondent was aggrieved with the decision and filed a complaint with the JSC which matter is pending investigation. Notwithstanding that position the recusal application is yet to be prosecuted whereas in exercising administrative powers the impugned file was allocated to be heard and determined by Hon. Justice Ominde.
6. This decision was informed by *the constitution* imperative to give effect to the protection of the right to a fair trial under Art 50 of *the constitution* as read with Art 48 of the same supreme law of the Republic. It is ordained in *the constitution* that every person has the right to a fair trial both in civil, criminal cases and other branches of law and the effective protection of all human rights under chapter 4 of *the constitution* very much depends on the practical availability at all times of citizens having access to competent, independent and impartial court of law which can and will administer justice fairly.
7. Yet at a glance of the facts of this case the applicant is yet to be heard on the application filed in court 20th February 2025. The twin case docket E003 of 2023 has a date before court No. 3 sometime in the month of October 2025. This necessitated the court to call for a status conference with a view to unlock this unique circumstances which is likely to impair the right to equality before the law. This also concerned how the two case dockets can be fast tracked by determining the merits of the two suits without further delay. The two applicants' in both E003 and E001 of 2025 are entitled as of right to have equal access to the courts of Kenya regardless the barrier of recusal of one court or another. This right to a fair trial can never be derogated from even in situations of emergency.



8. As a consequence of this background without the advantage of the progress made in the twin file before Hon. Justice Ominde and in absence of the other legal counsel for the 1st respondent, there is need for a more inclusive status conference of all the parties cited in this proceedings.
9. The other essential fact on a without prejudice basis matters of concerns are whether the pending application filed under certificate of urgency shall be left in limbo? So taking into considerations the peculiar circumstances pursuant section 1(A), 1(B), 3, 3(A) of the CPA as read with Order 40 Rule 1 an interim temporary injunction is issued against the Respondents so as not to render the subject matter of the application dated 20th February 2025 nugatory. This is grounded, for the parties to prosecute the recusal application of this court to rule out whether it is a forum of non conveniens or forum of conveniens, and given the fact that the other case file with twin facts is domiciled before Ominde J currently on annual leave. It is said that courts are to dispense justice and not to dispense with justice.
10. For those reasons a further status conference be held on 28th July 2025. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 16TH JULY 2025

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R. NYAKUNDI

JUDGE

