



REPUBLIC OF KENYA



Roimen & another v Equity Bank of Kenya Limited & another (Commercial Case E224 of 2019) [2024] KEHC 3476 (KLR) (Commercial and Tax) (1 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E224 OF 2019
DO CHEPKWONY, J
MARCH 1, 2024**

BETWEEN

CHRISTOPHER LEIYAN ROIMEN 1ST PLAINTIFF

ROIMEN INVESTMENT LIMITED 2ND PLAINTIFF

AND

EQUITY BANK OF KENYA LIMITED 1ST DEFENDANT

KEYSIAN AUCTIONEERS 2ND DEFENDANT

RULING

1. What is before the court for determination is the Notice of Motion application dated 15th November, 2022 which seeks the following orders:-
 - a. Spent;
 - b. Spent;
 - c. The public auction scheduled for the 18th November, 2022 be suspended for a period of six(60) days pending fresh valuation or assessment of the suit property to enable the Plaintiff/Applicants make a determination to dispose the same under private treaty either as a whole unit or single units under the *Sectional Properties Act* No. 21 of 2020.
 - d. That the court be pleased to Order preservation of the suit property under Order 40 Rule 10 of the *Civil Procedure Rules, 2010* pending the hearing and determination of this Application and further pending the proposed sale by way of private treaty.
 - e. That any other or further order as the court may deem just and fair in the circumstances.



2. The Application is based on the grounds on its face and the Supporting Affidavit of Christopher Leiyan Roimen sworn on 15th November, 2022 which are as follows:-
 - a. That the Plaintiffs/ Applicants property is due for sale by Public Auction on Friday, the 18th November, 2022
 - b. The Plaintiffs/Applicants are desirous off disposing the subject property over Private treaty either as a whole unit or single units under the [Sectional Properties Act](#) No. 21 of 2020.
 - c. There is a genuine effort by the Applicants to fully liquidate the amount owing due to the 1st Defendant Bank.
 - d. The orders issued by this Honourable Court on the 30th July, 2020 have been partly complied with.
 - e. The reason for the part complying of the above -mentioned order was due to the COVID-19 Pandemic which adversely affected the plaintiff/applicants rental income.
 - f. The 1st Defendant Bank has undervalued the suit property thus exposing the Plaintiffs/Applicants to loss and damage.
 - g. That a current valuation of the property surpasses and adequately secures the amount demanded by the 1st Defendant.
 - h. The intended sale will occasion irreparable loss and damages due to the current market value of the property which is over Kshs. 100,000,000 (One hundred million)
 - i. The suit property is a valuable family asset which is a major contributor to the 2nd Applicant's children education.
 - j. The 1st Respondent bank has unreasonably declined a proposal to dispose part of the property to reduce arrears and liability.
3. In response, the 1st Respondent filed Replying Affidavit through its Legal Services Manager, Kariuki Kingori sworn on 28th November, 2022 opposing the application while seeking to have it dismissed with costs.
4. By way of background, the Applicants applied and were granted credit facility by the 1st Respondent. The Applicants defaulted in the loan repayment and the 1st Respondent proceeded to issue the requisite notices to recover its monies. The Applicants then moved the court and filed an Application dated 22nd July, 2019 seeking injunctive orders against the sale of the security property.
5. In a Ruling delivered on 30th July, 2020 at Paragraph 28, the court held as follows:-

‘...Thus, I direct the Plaintiffs to deposit a sum of Kshs. 20,000,000/= into a joint interest earning account in the names of both advocates within 40 days of todays date. If the amount is not deposited as directed the 1st Defendant will be at liberty to proceed with the auction of the suit property upon issuing a fresh compliant notice...’
6. The Applicants have now moved the court with the present application which according to the 1st Respondent is an abuse of the court process. It has outlined the chronology of the case and the Ruling of the court delivered on 30th July, 2020 and argues that the Applicants did not comply with the said court orders and it proceeded to issue fresh notices under the [Land Act](#) and the [Auctioneers Act](#). The



- 1st Respondent also states that it had the subject property valued by Ms Gimco Ltd and a valuation report was issued.
7. The 1st Respondent goes on to state that the Applicants have not provided any material to warrant the grant of the injunctive orders being sought. The 1st Respondent also holds that the Applicants have not complied with the conditions of the court of 30th July, 2020 and the application, particularly the process of subdivision of the suit property, will only serve to delay the process.
 8. The 1st Respondent further states that the Applicants do not have prima facie with a probability of success and therefore the order of injunction being sought should not be issued and the application herein should be dismissed with costs.
 9. The court directed that the application to be canvassed by way of written submissions. The Applicants filed theirs dated 16th January, 2023 while the Respondent filed theirs dated 30th January, 2023, all of which the court has considered together with the authorities cited therein in its determination of the application dated 15th November, 2022.

Analysis and Determination.

10. Having read through the application dated 15th November, 2022, this court has taken into consideration the grounds upon which the application is based alongside the grounds set out by the Respondents and in its Replying Affidavit in Opposition thereof, alongside the arguments raised by either side in the written submissions together with the cited authorities. The issue for determination is whether the prayers being sought are meritable.
11. It is trite law that court orders should not be issued in vain as they are meant to be obeyed. It is also trite law that a court order in a suit remains to be valid unless it has been set aside, reviewed or appealed against. This is the position of the court in the case of *Republic -vs- Principal Secretary, Ministry of Defence Ex-Parte George Kariuki Waitihaka [2018]* eKLR

“It must however be remembered that Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal.”
12. In the instant case, the court had made a decision on 30th November, 2020 which remains to be valid, so that if the Applicants were aggrieved with the said decision, they ought to have filed an application to have it set aside, or reviewed or even lodged an Appeal against the said Ruling, instead of filing a fresh application seeking the same injunctive orders.
13. It is further trite law that where there is clear procedure prescribed under *the Constitution* or statute, the same should be followed. This was the position stated in the case of *Speaker of the National Assembly -vs- James Njenga Karume Court of Appeal at Nairobi Civil Application No. 92 of 1992* it where the court held as follows:-

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.....”
14. In this case, since it is clear that the Applicants have not followed the correct procedure and the fact that they did not comply with the court orders of 30th July, 2020, it is this court's finding that the



Application herein should not be entertained. And for this reasons, the court will not go into whether or not the conditions set out in the case of Giella –vs- Cassman Brown and Co Ltd [1973] EA 358 at 360 for injunctive orders to issue have been satisfied. This will be academic exercise.

15. In the circumstances, this court finds that the Notice of Motion dated 15th November, 2022 lacks merit and the same is dismissed with costs to the Respondents.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF FEBRUARY , 2024.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF MARCH , 2024.

ALFRED MABEYA

JUDGE

