



Maina v Stanbic Bank Kenya Limited & 2 others; Sanlam Life Ins. Ltd (Interested Party) (Civil Suit E216 of 2022) [2024] KEHC 5398 (KLR) (Commercial and Tax) (14 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E216 OF 2022
FG MUGAMBI, J
MAY 14, 2024**

BETWEEN

ROSEANN NYAMBURA MAINA PLAINTIFF

AND

STANBIC BANK KENYA LIMITED 1ST DEFENDANT

LIBERTY LIFE ASSURANCE [K] LTD 2ND DEFENDANT

**JOSEPH GIKONYO T/A GARAM INVESTMENTS AUCTIONEERS 3RD
DEFENDANT**

AND

SANLAM LIFE INS. LTD INTERESTED PARTY

RULING

1. Before the court is an application dated 26th October 2023, which seeks injunctive relief and preservative orders in respect of the plaintiff's property, to wit Kiambu Municipality Block III/230 (the suit property), pending the hearing and determination of the suit herein. The application is supported by the affidavit sworn by the plaintiff Roseann Nyambura Maina on 26th October 2023.
2. The plaintiff confirms the loan facility advanced by the 1st defendant on the basis of which the suit property was offered as security. It is also not controverted that the plaintiff obtained an injunction on 12th July 2022 restraining the defendants from realizing the suit property.
3. The plaintiff acknowledges that the Court further directed that this suit was to be set down for hearing within 60 days after the ruling. She however takes issue with the defendants for the delay in setting the



matter down for hearing, blaming the 1st defendant for not providing her with crucial documents in its possession that were necessary to amend her plaint as directed by the Court.

4. The plaintiff acknowledges that in March 2023 the 3rd defendant reluctantly furnished her with the documents initially requested vide her Notice to Produce together with a statutory notice. The plaintiff blames the defendants for deliberately delaying the process of hearing so that they could embark on the process of sale of the suit property before this court had the opportunity to hear and determine the issues raised.
5. The plaintiff confirmed that she was recalled to her previous employment where she reported and would therefore be in a position to make regular payments of USD 3,500 but the bank was not willing to accommodate her request for repayment. Instead, the bank advertised the property for sale on 23rd October 2023 giving raise to the application currently before the Court. The plaintiff additionally notes that the property has been undervalued.
6. The application is vehemently opposed by the 1st defendant through a replying affidavit sworn by Amos Mugambi, the Manager, Business Support & Recoveries Officer of the 1st defendant. The 1st defendant accuses the plaintiff of using the present application as a circumventing strategy to try and vary, appeal and totally avoid the Orders of this Honourable Court pursuant to the ruling delivered on 12th July 2022.
7. According to the 1st defendant, the plaintiff is guilty of the delay tactics that she blames them of. The 1st defendant urges this Court to find that its statutory power of sale had crystalized arising from the ruling of 12th July 2022.

Analysis

8. I have carefully considered the application, the response to it, submissions and evidence presented by the parties. The question is whether the plaintiff is deserving of the orders sought in the application. A cursory look at the record indeed confirms that the ruling of July 2022 allowed the injunctive relief sought by the plaintiff on conditional terms. It reads in part that:

“The order of temporary injunction shall remain in force only on condition that the applicant continues servicing the loan as per the loan agreement between her and the 1st defendant except for the period of 9 months that is disputed on the basis that it was covered under the mortgage insurance policy.”
9. Despite this order having been issued in July 2022 and the present application filed on 26th October 2023, 13 months after the said ruling, the plaintiff has brought no evidence to prove that she complied with the Court orders. The 1st defendant confirms that the last payment on the plaintiff's account was made on 22nd September 2022. This position has not been controverted by the plaintiff.
10. This is so even as the plaintiff lays blame on the defendants for delay tactics. I note that the directions on repayment of the loan amounts was to continue independent of the preparations for the hearing of the suit. In other words, the Notice to Produce which the plaintiff claims was the cause of the delay was not a reason for the plaintiff not to continue remitting the loan amounts.
11. Even then, the Notice to Produce has been exhibited. It is dated 1st August 2022. The documents requested for were served on the plaintiff on 31st October 2022. The plaintiff confirms that the documents were served on her together with a Statutory Notice and rightly so. I say this because again, no evidence has been led to show that in the intervening period the plaintiff had complied with the Court orders.



12. On the offer to repay USD 3,500, the bank was not obliged to accommodate the plaintiff's subsequent request when she was already in default of the Court order. I find the reason given by the 1st defendant as to why the said offer was untenable to be justifiable.
13. That said, and looking at the Court file, this matter that should have been listed for hearing within 60 days of the ruling of 12th July 2022 is yet to proceed to hearing almost 2 years later. Each of the party's points fingers at their adversary. The truth however is that each of the parties is guilty of the delay as is evident from the numerous reasons for the adjournments.
14. The plaintiff avers that the suit property herein has been undervalued. In response, this Court agrees with the submission and authority referred to by the 1st defendant in *Premier Flour Mills Ltd & 2 Others V Standard Chartered Bank Kenya Limited*, [2019] eKLR. The Court held that a question on valuation was not a justification to stop the exercise of a statutory power of sale.
15. Further, section 99(4) of the *Land Act* provides that a person prejudiced by an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.
16. For the avoidance of doubt, this Court notes that the plaintiff was issued with a 90-day statutory demand dated 24th March 2023 and a 40-day Notification of Sale dated 4th July 2023. A redemption Notice and Notification of Sale dated 31st August 2023 were also served on the plaintiff. I note that service of these notices is not controverted by the plaintiff.
17. The plaintiff has continued to enjoy the protection of injunctive relief of this Court since 12th July 2022. She now seeks further preservatory orders. It must be understood that justice a double-edged sword. It cuts both ways. The plaintiff benefitted from a facility extended to her by the 1st defendant.
18. Besides the disputed 9 months, the plaintiff does not deny owing the 1st defendant. To date, the outstanding amount remains. This continues to hurt and inconvenience the business of the 1st defendant who is also deserving of the protection of this Court.
19. The plaintiff has not complied with the directions of this Court issued on 12th July 2022. The 1st defendant has on its part complied with the conditions placed by this Court to be able to exercise its statutory power of sale. I therefore find no reason to issue the prayers sought. The statutory power of sale has crystallized. The issue of the undervaluation of the suit property will be determined within the suit.

Disposition

20. On these grounds, the application dated 26th October 2023 is dismissed with costs to the 1st defendant. In the meantime, this Court shall issue directions to ensure that the suit proceeds to hearing so as to determine the outstanding issues.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14TH DAY OF MAY 2024.

F. MUGAMBI

JUDGE

