



**Mediheal Hospital & Fertility Centre Ltd v NCBA Bank Kenya PLC & another  
(Commercial Case E003 of 2024) [2024] KEHC 6581 (KLR) (4 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6581 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
COMMERCIAL CASE E003 OF 2024  
RN NYAKUNDI, J  
JUNE 4, 2024**

**BETWEEN**

**MEDIHEAL HOSPITAL & FERTILITY CENTRE LTD ..... PLAINTIFF**

**AND**

**NCBA BANK KENYA PLC ..... 1<sup>ST</sup> DEFENDANT**

**PHILIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicant filed an Application under certificate of urgency dated 6.5.2024 seeking the following orders
  - i. That a temporary injunction do issue to restrain and prevent the Respondents by themselves and/or their agents servants, employees, assigns or otherwise howsoever from interfering with the Applicant's quiet possession of the attached hospital machines and/or any other property belonging to the applicants and/or equipment in possession of the Applicant herein or in any manner exercising or continuing to auction the said properties or any thereof pending the hearing and final determination of this application interparties.
  - ii. That a temporary injunction do issue to restrain and prevent the Respondents by themselves and/or their agents, servants, employee, assigns or otherwise howsoever from interfering with the Applicant's quiet possession of the attached hospital machine and/or equipment in possession of the Applicant and/or any of the Applicant's property herein or in any manner exercising or continuing to auction the said properties or any thereof pending the hearing and final determination of the main suit.
2. The application was certified urgent on 8.5.2024 and as a consequence interim orders of stay in terms of prayer No. 2 & 3 were issued pending the hearing and determination of the Application. Thereafter the Defendants filed replying affidavits in answer to the Notice of Motion. The matter came up



for directions on 27.5. 2024 in which learned counsel for the Defendants raised pertinent issues as premised in the averments and annexures in the Affidavits dated 24.5.2024. In addition, a certificate of urgency was filed in the same day under Order 1 Rule 10 and Order 51 Rule 15 of the Civil Procedure Rules, Section 3A, 63, & 80 of the CPA. The Application sought the following reliefs:

- i. That: This Honourable Court be pleased to stay further proceedings in this suit pending the hearing and determination for this application inter-parties.
  - ii. That the intended interested party/Applicant herein be joined into the proceedings herein as the 3<sup>rd</sup> Defendant for purposes of this Application and the entire Suit.
  - iii. That the Plaintiff/Respondent be directed to amend the plaint to incorporate the interested party as the 3<sup>rd</sup> Defendant in the suit.
  - iv. That this honorable court be pleased to set aside the interim orders issued on 8<sup>th</sup> May 2024 and the intended interested party/Applicant be granted adequate time to file and serve its Replying Affidavit to the Plaintiff's Application dated 6<sup>th</sup> May 2024 and Defence to the main suit
3. In brief when the matter came out for directions in the presence of both counsels seized of the subject matter this court took the liberty to give directions in line with Section 1A of the CPA. First and foremost, the law on joinder provides that any number of persons each of whom has a claim whether jointly, jointly and severally, separately or in the alternative may join as interested party or as plaintiffs in one action against the same defendant or defendants against whom anyone or more of such person proposing to join as plaintiff's would. This is to assist the court to determine the issues substantially and the same question of law or fact for which if separate cause of actions were instituted it will constitute multiplicity of suits.
4. Therefore, in this latest application, the plaintiffs cause of action as instituted is being challenged by the interested party who pleads that it has direct and substantial interests in any order the court might make in the pending proceedings. That if not allowed to join the proceedings any such final orders that may be issued cannot be sustained or carried into effect without prejudicing its rights. The relief sought in the 1<sup>st</sup> instance was to have the interest party be allowed to join the proceedings unless the court is satisfied that it has waived its rights to be part of the proceedings.
5. My reading of the affidavits filed by the interested party in reference to the justiciable issues to the extent as between the Plaintiff and the Defendant bank in adjudicating the issues there is prima facie evidence that the interested party has direct, legal and substantial interest in the subject matter of this litigation. The involvement and locus standi of the interested party is in specific summary found in the affidavits and annexures filed before this court. As a consequence, if this proceeding proceed being heard and determined the interested party might be prejudiced by a judgement in favour of the plaintiffs. Having considered all this in the interim the joinder of the interested party is appropriate in law to enable it canvas the questions of law and fact which touch on the subject matter of the suit.
6. A panoramic view of the affidavit evidence and documentary annexures filed by the interested party shows and enormous breadth of issues arising out of the leasing agreements on the various assents domiciled at the plaintiffs Mediheal Hospital & Fertility Centre LTD. In the earlier application, filed by the Plaintiff this court exercised discretion ex-parte to grant interim orders as against the proclamation and attachment of the aforesaid assets deposed in the various statements of facts and instruments filed by the interested party for consideration by this court. It seems to me in matters of this kind it is essential



that the court should adopt the guidelines in order 40 Rule 1 & 2 of the Civil Procedure Rules for the exercise of discretion to meet the changing circumstances of the characteristics of a case before it on the basis of serving the interests of justice. In the case of *Siskina* (1979) AC 210 it was held inter alia that the court has power to grant interlocutory relief based on a cause of action against a defendant duly served where such relief is ancillary to the final order. In this case the court is looking ahead to that stage designed to ensure that no action takes place in the interim to defeat the purpose of the suit filed herein by the plaintiff. It is therefore my judgement that a freezing order be issued against all those assets being claimed by the interested party from being proclaimed or attached by any creditor so to speak until the determination of this suit. Its purpose is to aid the court's process on the basis and scope of the jurisdiction to be exercised on the substantive reliefs as between the plaintiff and the defendant bank. This structural interdict is knitted together with rights asserted by the plaintiff in the cause of action against the defendant bank. There is a real risk that unless the interim injunction is granted against all those assets being claimed by the interested party any other creditor may lay claim over them before the pending suit is fully heard and determined.

7. As will all be clear the court considers this order to be at the core of the pending proceedings. Hence the freezing order be extracted and annexed to the inventory of assets against any party who may be purposing to hold a prospective claim rightly so or wrongly until further orders from this court. The same shall be publically displayed in the premises of the plaintiff wherever such assets are located within the Republic of Kenya.
8. As for the other issues raised by the plaintiff Applicant, further disclosures and submissions be made by both counsels for a determination of the Notice of Motion dated 6.5.2024 and for the Notice of Motion filed by the interested party filed on 24.5.2024.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY FO JUNE 2024**

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**R. NYAKUNDI**  
**JUDGE**

