



REPUBLIC OF KENYA



**Ndirangu t/o Ndirangu T/A Comfort Guest Housea Comfort Guest House v Equity Bank
& another (Civil Case E001 of 2023) [2024] KEHC 9558 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL CASE E001 OF 2023
GMA DULU, J
JUNE 6, 2024**

BETWEEN

STANLEY THUO NDIRANGU T/A COMFORT GUEST HOUSE PLAINTIFF

AND

EQUITY BANK 1ST DEFENDANT

THAARA AUCTIONEERS 2ND DEFENDANT

RULING

1. Before me is an application dated 5th July 2023 filed by the plaintiff through counsel M/s Otieno Otwere & Associates Advocates.
2. The application was brought under Sections 1A, 1B, and 3A of the Civil Procedure Act (Cap.21), as well as Order 40 Rules 1, 2 and 3, and Order 51 of the Civil Procedure Rules and seeks the following orders:-
 - 1 (Spent)
 2. (Spent)
 3. That the court be pleased to grant temporary injunction restraining the defendants by themselves, their agents, servants, representatives, assigns and/or any other person acting on their behalf from taking possession of, selling in public auction, transferring and/or dealing in any manner adverse to the plaintiff's parcel of land known as L.R No. 1956/130 VOI CCR.392 81 situated at Voi town pending the hearing and determination of this suit.
 4. That costs of the application be provided for.
3. The application has a ground on the face of the Notice of Motion that the defendants advanced the plaintiff with a top up loan of Kshs. 6,277,161/= to his previous loan making a total of Kshs.



- 19,750,000/= which was secured through property L.R No. 1956/130/VOI (CCR 392 81) situated at Voi town, but fell into arrears due to Covid 19 menace; that the plaintiff informed the 1st defendant of the predicament, but the 1st defendant still proceeded to instruct the 2nd defendant to sell the plaintiff's property at a public auction; that the 1st defendant had not served the plaintiff with the requisite statutory notice; that the plaintiff will suffer irreparable loss and damage if the orders sought are not granted.
4. The application was filed with a supporting affidavit sworn by Stanley Thuo Ndirangu the plaintiff on 5th July 2023, which amplifies the grounds, and annexed a number of documents including bank statements and notice from the 2nd defendant of intended sale by public auction of the subject land.
 5. The application is opposed through a replying affidavit sworn on 21st July 2023 by Kariuki Kingori 1st defendant's Manager Legal Services in which it was deponed that the three (3) months statutory notice for sale was given; that the default of the plaintiff having not been rectified the 1st defendant caused the 2nd defendant to issue the plaintiff with 45 days redemption notice, and that there was no sensible excuse to restructure the loan as the closure of hotels imposed during Covid 19 period ended in June 2020. The replying affidavit annexed several documents, including copy of the loan facility agreement.
 6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Otieno Otwere & Associates Advocates for the plaintiff, as well as the submissions filed by Muriu Mungai & Company LLP Advocates for the 1st and 2nd defendants. Both sides relied upon decided court cases.
 7. This is an application for interlocutory injunction pending hearing and determination of the pending suit herein.
 8. Such applications, are governed by the considerations restated in the case of *Giella v Cassman Brown & Company Ltd* (1973) EA 358.
 9. In the *Giella case* above, the parameters to be considered by the court were summarized as follows:-
 - a. Whether there is a *prima facie* case with probability of success.
 - b. Whether irreparable loss or injury will occur if the temporary injunctive orders are not granted.
 - c. If in doubt, the balance of convenience test to be used by the court.
 10. I have perused the plaint herein, and considered the other documents filed as well as the arguments on both sides. It is a case of alleged breach of contract or non compliance with contractual and statutory requirements, in a borrower and financial institution relationship. In my view, a *prima facie* case with probability of success has been disclosed herein, as the case can go either way.
 11. With regard to whether the applicant will suffer irreparable damage or injury if the temporary or interlocutory injunctive orders pending determination of the case are not granted, in my view that is so. This is because the subject matter of the intended sale is land of the plaintiff and there is no suggestion that it can be adequately compensated in the form of damages.
 12. Secondly, in my view, if the interlocutory injunction order is not granted, the pending suit herein will be rendered nugatory and become academic and moot.
 13. I thus find that if the temporary or interlocutory injunctive orders sought are not granted, the plaintiff will suffer irreparable loss or injury.



14. Having found as above, I do not find it necessary to delve into considering in depth the balance of convenience. I will thus have to allow the application based on my findings on the first two requirements.
15. Consequently and for the above reasons, I allow the application and order as follows:-
 - i. I grant orders of temporary injunction restraining the defendants by themselves, their agents, servants, representatives, assigns and/or any other person acting on their behalf from taking possession of, selling in public auction, transferring and/or dealing in any manner adverse to the plaintiff's parcel of land known as LR No. 1956/130 VOI CCR.392 81 situated at Voi town pending the hearing and determination of this suit.
 - ii. The costs of the application will abide the decision in the pending suit.

DATED, SIGNED AND DELIVERED THIS 6TH DAY OF JUNE 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Trizah – Court Assistant

Ms. Cheruiyot holding brief for Mr. Kongere for defendants

