



**Kimutai v Equity Bank Limited & another (Civil Suit
E003 of 2023) [2024] KEHC 9328 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9328 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL SUIT E003 OF 2023
AC MRIMA, J
JULY 25, 2024**

BETWEEN

BETHWEL KIMUTAI APPLICANT

AND

EQUITY BANK LIMITED 1ST RESPONDENT

ANTIQUA AUCTIONS AGENCIES 2ND RESPONDENT

RULING

1. This ruling relates to an application by way of a Notice of Motion dated 12th April, 2023.
2. The application was taken out by the Plaintiff in his capacity as the Chargor in respect of the properties known as Chepsiro/Kibuswa Block 1/Kelchinet/223 and Nandi/Kamobo/1122.
3. It was brought under Sections 3 and 3A of the *Civil Procedure Act*, Order 40 Rule 1(a), Order 51 Rule 1 of the Civil Procedure Rules.
4. The following reliefs were sought: -
 - a. Spent;
 - b. An Order of temporary injunction do issue exparte in the interim against the defendants/ respondents or their agents or assigns from selling the plaintiff's properties title number Chepsiro/Kibuswa Block1/Kelchinet/223 AndNandi/Kambobo/1122 through public auction on 14/4/2023 or dealing in any other way pending the hearing and determination of this application interpartes.
 - c. An Order of temporary injunction do issue exparte in the interim against the defendants/ respondents or their servants, agents or assigns from selling the plaintiff's property title number Chepsiro/Kibuswa Block1/Kelchinet/223 andNandi/Kamobo/1122 through public auction



on 14/4/2023 or dealing in any other way pending the hearing and determination of the main suit.

- d. Costs of this application be borne by the defendants/respondents.
5. The grounds upon which the above orders were sought were captured in the body of the application.
6. In further sustenance of the application, the Applicant filed a Supporting Affidavit.
7. The application was vehemently opposed through the Respondent's Replying Affidavit sworn by one Shahim Chibole on 18th April, 2023.
8. The parties proposed, and this Court directed, that the application be disposed of by way of written submissions. Whereas the Respondent complied with the filing of the written submissions, the Applicant did not.
9. It seems the Applicant lost interest in the application after the interim orders he had obtained Exparte suspending the public auction were vacated. Since then, the Applicant has not been vigilant in the matter.
10. As this Court had directed that the application be heard by way of written submissions, and the Applicant did not comply, then the application was never prosecuted to yield to a proper inter-partes ruling.
11. The upshot, therefore, is that since the application was not heard as directed, the Applicant seems not intent on prosecuting the same and the application ought not to stand.
12. Consequently, the following final orders do hereby issue: -
 - a. The Notice of Motion dated 12th April, 2023 is hereby dismissed for want of prosecution.
 - b. In order to fastrack the determination of this suit, the Defendant shall file and serve its Statement of Defence within the next 14 days of this order; if not yet.
 - c. Once served, the Plaintiff shall, if need be, file a Reply to Defence within 14 days of service.
 - d. The parties shall thereafter comply with Order 11 of the Civil Procedure Rules within 21 days of (c) above.
 - e. This matter shall be fixed for Pre-Trial Conferencing on dates to issue.
 - f. Time is of essence and any defaulting party shall suffer the consequences.
 - g. Costs of the application shall be borne by the Applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 25TH DAY OF JULY, 2024.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

No appearance for Mr. Oduor, Counsel for the Applicant/Plaintiff.

Miss. Kessei, Counsel for the Respondent/Defendant.

Chemosop/Duke – Court Assistants.

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