



REPUBLIC OF KENYA



**Mwamboga v Stanbic Bank Ltd & another (Civil Suit
E015 of 2024) [2024] KEHC 9158 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E015 OF 2024
JK NG'ARNG'AR, J
JULY 24, 2024**

BETWEEN

BAKARI ALI HASSAN MWAMBOGA PLAINTIFF

AND

STANBIC BANK LTD 1ST DEFENDANT

JOSEPH M GIKONYO T/A GARAM AUCTIONEERS 2ND DEFENDANT

RULING

1. This is a ruling to the application dated 3/4/2024. The application seeks the following orders;
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this suit the 1st and 2nd defendants, whether by themselves, tier agents, servants and/or representatives from advertising, trespassing, selling by public auction or in any way dealing with the piece of land known as LR No. MN/1/8026 Nairobi Estate Bamburi.
 4. That the Cost of this application be provided for.
2. It is based on the following grounds;
 - i. Affidavit of Bakari Ali Hassan Mwamboga deponed on 3/4/2024.
 - ii. There was a threatened sale of the suit property via public auction on 8/4/24.
 - iii. The Defendant/Respondent intended to exercise statutory power of sale over a charge created over the suit property.
 - iv. The Defendant/Respondent has not served the Plaintiff with the statutory notices.



- v. There is uncertainty over the sum owing at the moment.
 - vi. The Defendants/Respondent has applied exorbitant interest rates that are harsh, oppressive and unconscionable hence prejudicial to the Plaintiff/Applicant.
3. This application is opposed vide a replying affidavit of Edna Omangi sworn on 29/4/2024.
 4. The grounds given to oppose the application include the following;
 - i. The deponent is the defendant's manager of Non- Performing Loans at Stanbic Bank Kenya Ltd.
 - ii. In August 2017 the Plaintiff applied for a Credit facility from the 1st defendant amounting to (Eur 154,867).
 - iii. The Plaintiff used the suit property to secure this facility.
 - iv. The Plaintiff defaulted in the repayment obligations as agreed and the Plaintiff was notified as early as 11/10/2018.
 - v. all the statutory notices were served upon the three Plaintiffs as per the address that was given by them in execution of the facility and the evidence exhibited.
 - vi. At the moment. The loan remains in arrears to a tune of EUR 263,510.62 as on 26/4/2024.
 - vii. The Defendant/Respondent has proceeded as per the loan agreement.
 - viii. The Plaintiff has no merit.
 - ix. The Plaintiff has come to court with unclean hands hence ought not to be granted.
 5. The application was canvassed by way of written submissions. The Plaintiff's submissions are dated 17/5/2024.
 6. The Defendants submissions are dated 20/6/2024. The gist of this application is prayer for injunctive orders. The celebrated case in the case of Giella vs Cassman Brown and Company Ltd. 1973 EA 358. The survey in summary in the holding of what is to be proved are;

“First an applicant must show a prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
 7. On the 1st limb of whether there is a prima facie case or not the issues that come out are;
 - i. The debt is not in dispute as per the annexure EO1 as well as the charge agreement.
 - ii. It is not also lost that it is settled that the suit property was the collateral.
 - iii. It is also clear that the Applicant/Plaintiff is in default.
 - iv. It is also clear that the sum in dispute is well captured.



8. On the issue of interest, this cannot be ground to stop the process of realization of security where the time has crystalized. I will rely on the case of *Jim Kennedy Njeru –Vs Equity Bank (K) Ltd.* [2019] eKLR where the Court observed;

“I wish set it clear that in accordance with the already existing jurisprudence, a dispute touching on the amount payable or interest chargeable without more is not a ground for restraining a charge from exercising its statutory power of sale.

In the case of *Priscillah Krobought Grant vs. Kenya Commercial Finance Co. Ltd. and 2 Others*, Court of Appeal at Nairobi, Civil Application No. Nai 227 of 1995 (108/95 V.R) (unreported), the court stated as follows: -

“Finally, it will bear repetition, we think if we were to state that a court does not normally grant an injunction to restrain a mortgagee from exercising its statutory power of sale solely on the grounds that there is a dispute as to the amount due under the mortgage – see *Barmal Khanji Shah & Another Vs. Shah Depar Devji* (1965) E.A 91, 32 *Halsbury’s Laws of England* (4th Edition) paragraph 725 and *Uhuru Highways Development Ltd. Vs. Central Bank Kenya and 2 Others*, Civil Application No. Nai 140 of 1995 (unreported) per Kwach J. A.”

9. As it is the Applicant therefore has not established a prima facie case.
10. This being the case, I do not wish to go into the other limbs. This is sufficient for me to determine this application.
11. Consequently, I do proceed to find that the application dated 20/6/2024 has no merit. The application is dismissed with costs to the Defendant/Respondent.

DATED AND DELIVERED VIRTUALLY AT MOMBASA ON THIS 24TH DAY OF JULY, 2024.

J.K. NG’ARNG’AR, HSC

JUDGE

In the presence of: -

Wambo Muyala & Co. Advocates for the Plaintiff/Applicant- present

Wangai Nyuthe & Company Advocates for the Respondents- No appearance

Court Assistant – Samuel Shitemi

