



M’Muthuro ((Suing as the administrator of the Estate of M’Muthuro M’Riria (Deceased)) v Family Bank Limited & another (Civil Case 1 of 2024) [2024] KEHC 8894 (KLR) (16 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8894 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL CASE 1 OF 2024**

**LW GITARI, J
JULY 16, 2024**

BETWEEN

**LAWRENCE MUKWAITI M’MUTHURO PLAINTIFF
(SUING AS THE ADMINISTRATOR OF THE ESTATE OF M’MUTHURO
M’RIRIA (DECEASED))**

AND

**FAMILY BANK LIMITED 1ST DEFENDANT
NOREN AUCTIONEERS 2ND DEFENDANT**

RULING

1. I have considered the application dated 20/5/2024 by way of Notice of Motion. The applicant seeks an order of interim order of injunction to conserve the property pending the hearing and determination of this suit. The court has discretion to order an injunction to be issued where it is shown that the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. The court may in such circumstances issue an injunction pending the hearing and determination of the suit. See Order 40 rule 1- *Civil Procedure Rules*. The principles of granting of an injunction are well laid down in the case of *Giella –v- Cassman Brown* 1973 E.A 358.
2. These principles are as follows:-
 1. “The applicant must show a *prima facie* case with chances of success.
 2. An application will not normally be granted unless the applicant might otherwise suffer irreparable loss that cannot be adequately compensated by an award of damages.
 3. When the court is in doubt it will decide the application on the balance of convenience.”



3. The applicant has demonstrated that the respondent has advertised the sale of the suit properly by public auction. That the property is matrimonial property which is supposed to be inherited by the wife of the deceased and her children as the registered owner is deceased. If the property is sold the applicant is likely to suffer irreparable loss. The applicant is the deceased wife and has rights of a beneficial owner under the *Law of Succession Act*. She has also demonstrated that her husband is deceased and the respondent has failed to disclose the particulars showing the reason of the sale of the property through public auction. I find that if the defendant is not restrained from selling the land in dispute to 3rd parties the suit is likely to be overtaken by events and the applicant might in the process suffer irreparable loss. The respondent is not likely to suffer any loss, and so, the balance of convenience tilts in favour of the applicant.
4. I find that the application has merits. There shall be an order of temporary injunction restraining the respondent, their servants and/or agents from surveying, advertising, alienating, occupying, selling, transferring, disposing or interfering with the plaintiff's rights, interests and quiet possession of Land Parcel No. Mwimbi/S.Mugumango /261 pending the hearing and determination of this suit or further orders of this court.

Costs shall be in the course.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 16TH DAY OF JULY 2024.

L.W. GITARI

JUDGE

16/7/2024

