



**Githae v Equity Bank Ltd & another (Civil Suit E631 of 2021)
[2023] KEHC 22269 (KLR) (Commercial and Tax) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E631 OF 2021
A MABEYA, J
SEPTEMBER 20, 2023**

BETWEEN

PETER NGARI GITHAE PLAINTIFF

AND

EQUITY BANK LTD 1ST DEFENDANT

ERNEST KYALO SIMBI T/A NORERN AUCTIONEERS LTD 2ND DEFENDANT

RULING

1. Vide his Motion on Notice dated 11/09/2023, *inter alia*, under Order 40 Rules 1, 2, 3 and 4 of the [Civil Procedure Rules](#), the plaintiff sought a temporary injunction to restrain the defendants from advertising or disposing off, the property known as Villa No 5 situate on LR No 330/270 Thomson Estate (“the suit property”).
2. The application was supported by his affidavit sworn on even date. He alleged that he is the registered owner of the suit property. In February, 2014, he took a facility from the 1st plaintiff of Kshs 20,300,000/= for 120 months and charged the suit property as security therefor.
3. That he had serviced the same diligently until Covid 19 caught up with him in 2020. That he thereafter lodged the present suit and the court ordered that he be furnished with all the documents in respect of the said facility within 30 days of June 17, 2022. That the 1st defendant was also to re-issue all the statutory notices afresh but the plaintiff be at liberty to settle the outstanding amount before the expiry of the period set out in the notices to be served afresh.
4. That despite the said order, the 1st defendant supplied the documents in batches the last of it being supplied in November, 2022. He thereupon carried out his reconciliation whereby he gave the 1st



- defendant a settlement proposal on January 25, 2023. However, on December 9, 2022 the 1st defendant had issued a statutory notice demanding Kshs 10,450,374/88.
5. That the auctioneer issued a notification on August 8, 2023 for sale of the suit property on September 13, 2023. That the notice was contrary to rule 15(5) of the *Auctioneers Rules*, 1997. That it was malicious for the 1st defendant to issue notices for sale yet it had failed to respond to the plaintiffs' settlement proposals. That he had so far paid Kshs 3,560,000/= between January 2023 and August, 2023.
 6. That the 1st defendant had clogged his right of redemption by laying illegal penalties and interest thereon; listing him with the Credit Reference Bureau. That his inquiries on the advertisement of the suit property for sale was not responded to. That the intended sale was premature and illegal as he had not been served with the requisite notices, that he was not in default and that there is no current valuation report for the suit property. That he had to date paid Kshs 32,400,000/= and there was an outstanding sum of Kshs 7,888,403/80 which he was willing to pay by January 31, 2024.
 7. The application was served for directions on September 13, 2023. On that date, when the parties appeared before me, it was disclosed that the sale was to be on September 27, 2023 and not September 13, 2023. I directed the defendants to respond to the application within 3 days and the same be heard on September 19, 2023.
 8. This morning, when the matter came up for hearing inter partes, Mr Kiprono appeared for the plaintiff but there was no appearance for the defendants. He told the court that he had not been served with any response. That although there were some discussions, no settlement had been arrived at. He urged the court to grant the application in terms of prayer nos 3 and 4 of the motion.
 9. I have considered the application and the supporting affidavit. I note that the application has not been responded to. I have checked the CTS and there is no replying affidavit nor grounds of opposition. The application is therefore unopposed.
 10. I note that the allegations made on oath by the plaintiff have not been denied nor challenged. They are serious issues of contravention of the law.
 11. In line with *Giella vs Cassman Brown* Case, I am satisfied that the plaintiff has demonstrated a *prima facie* Case with a probability or success. That having paid over Kshs 30M for loan of Kshs 20.4 M, if the property is sold, he will suffer irreparable loss.
 12. In any event, since the plaintiff has undertaken to settle the outstanding sum by January 31, 2024, the balances of convenience rests with maintaining the status quo.
 13. Accordingly, I grant prayer Nos 3 and 4 of the Motion as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER, 2023.

A. MABEYA, FCIARB

JUDGE

