



REPUBLIC OF KENYA



KENYA LAW
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**Tanna & another v I & M Bank Limited & 2 others (Commercial Case E846 of 2021)
[2024] KEHC 12849 (KLR) (Commercial and Tax) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E846 OF 2021
FG MUGAMBI, J
OCTOBER 18, 2024**

BETWEEN

KETUL SURENDRA TANNA 1ST PLAINTIFF

RUMEET SURENDRA TANNA 2ND PLAINTIFF

AND

I & M BANK LIMITED 1ST DEFENDANT

NCBA BANK KENYA PLC 2ND DEFENDANT

P.V.R. RAO 3RD DEFENDANT

RULING

Background and Introduction

1. This ruling determines the application dated 8/05/2024 expressed to be brought under Article 159(2) (d) of *the Constitution*, Sections 1A and 3A of the *Civil Procedure Act*, Order 40 Rules 1& 2, Order 22 Rule 22 and Order 51 Rules 1& 2 of the Civil Procedure Rules. The application seeks to stay payment of the purchase price and an intended transfer predicated on an auction conducted on 24/4/2024, in respect of L.R. No. 209/58888(Original No. 4639/33) situated along Riverside Paddocks, off Riverside Drive, Kileleshwa, Nairobi (the suit property). It further seeks to have the 1st respondent compelled to produce the proceedings of the said auction.
2. The applicants take issue with the procedure in which the said auction was held. It is their case that the suit property was sold to the 3rd highest bidder at a lower price of Kshs. 170,000,000/=. Not only is this price lower than the forced sale value of Kshs. 172,000,000/=, the applicants state that there were higher bids of Kshs. 195,000,000/= and Kshs. 200,000,000/= which were rejected without any explanation.



3. Opposing the application, Andrew K. Muchina, for the 1st respondent, filed a replying affidavit sworn on 29/5/2024. He states that the prayer for an injunction is res judicata as the court has addressed itself on two occasions on the issue of injunction. He states that the property was sold on 24/4/2024 at Kshs 172,500,000/= to the 3rd respondent who was the highest bidder. This was against a lower bid of Kshs. 165,000,000/=. The 1st respondent confirms that the bid was equivalent to the forced sale value as per the auctioneer's report.
4. As such, the 1st respondent confers that the applicants' right of redemption was extinguished, as the court orders allowed the sale of the property and there has been no appeal on the said orders.
5. The 2nd respondent filed a Notice of Preliminary Objection dated 30/5/2024, equally on the grounds that the application ought to be struck out as it offends the provisions of Section 7 of the [Civil Procedure Act](#) and Section 99 (4) of the [Land Act](#).
6. Parties filed their respective submissions, which I have carefully considered alongside the pleadings and evidence in support of their cases. The preliminary point that must be determined before the substantive application is whether the application is res judicata.
7. Section 7 of the [Civil Procedure Act](#) precludes a court from hearing and determining a suit or issue in which the same has been in issue in a former suit between the same parties or their agents, before a court of competent jurisdiction or in a suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
8. From the record, this court has already addressed itself on the issue of injunctive relief in its ruling of 21/07/2023. Upon analyzing all the facts and evidence, the court concluded that the applicants have not established a prima facie case with a probability of success. When issuing the final orders, this court further confirmed that for the avoidance of doubt, the prayer for injunction fails.
9. Likewise, when the applicant filed the application dated 20/9/2023 seeking injunctive relief against the transfer of the suit property, this court in its ruling of 13/3/2024 found it was res judicata and dismissed the application.
10. In the instant motion, the applicants once again seek injunctive relief against the transfer of the suit property. The grounds coined to support the motion are based on the illegal process of the auction. I would again, and for the second time, state that the application herein is res judicata having already been determined by this court on the two occasions that I have pointed out.
11. Even if I must comment on the substance of the prayers sought, hopefully to avoid any further litigation along this line, there is no dispute that the prayer for injunctive relief against the sale of the property was dismissed. There was no bar to the auction taking place. As such, the applicants' right of redemption of the suit property was extinguished with the fall of the hammer.
12. On the face of it, the court has reviewed the valuation report of August 2023, the certificate of sale and the public auction attendance register both dated 24/4/2024. The register confirms that two bids were received on the property and on the face of it, the highest bidder was the sum of Kshs. 165,000,000/=. I am therefore not satisfied that the applicants have made a case to stop the transfer and registration of the suit property.
13. In the circumstances, the avenue open to the applicants is to pursue their claim and prove that indeed there were irregularities in the auction. Should they be successful, the loss may be compensated by way of damages. On this account the application therefore fails.



Disposition

14. Accordingly, the application dated 8/5/2024 is dismissed with costs to the 1st and 2nd respondents.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 18TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

