Xianghui International (K) Ltd v African Banking Corporation Ltd (ABC Bank) & another (Civil Suit E018 of 2024) [2024] KEHC 15326 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15326 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL SUIT E018 OF 2024

HM NYAGA, J

DECEMBER 2, 2024

BETWEEN

XIANGHUI INTERNATIONAL (K) LTD ..... PLAINTIFF

AND

AFRICAN BANKING CORPORATION LTD (ABC BANK) ..... 1ST DEFENDANT

DENNIS KIRUI T/A SADDABRI AUCTIONEERS ..... 2ND DEFENDANT

RULING

1. The Notice of Motion application for determination is the one dated 3rd June,2024 by the Plaintiff/ Applicant. The Application seeks Orders: -

   I. Spent

   II. Spent

   III. THAT this Honourable Court be pleased to issue an interim injunction pending the hearing and determination of this Application restraining the defendants by themselves, their agents and or assigns, or any of them from selling or disposing or otherwise interfering with land parcel No. NAKURU MUNICIPALITY/BLOCK 8/67.

   IV. THAT pending the hearing the 1st Defendant be ordered to supply the plaintiff with the set documents pertaining to the loan facility.

   V. THAT this Honourable Court be pleased to issue any other or further orders that it deems just and expedient for the ends of justice.

   VI. THAT the costs of this Application be provided for.

2. The application is supported by the grounds on its the face and the affidavit sworn on 10th March, 2021 by Wu Shenen, who describes himself as the Applicant's director/majority shareholder.

3. In opposition to the application, Louis Omukhulu who describes himself as the 1st respondent's legal officer, filed a Replying Affidavit sworn on 20th June 2024.

4. In response to the Replying Affidavit, Wu Shenen swore a further Affidavit on 26th July,2024.

The Applicant's case

5. The Applicant states that sometimes in the month of April, 2024 the 1st Respondent served it with a redemption notice instructing it to deposit Ksh. 149,216,562/= with it and efforts to know the genesis of the purported loan facility from the 1st Respondent was rendered futile hence the filing of this suit.

6. The Applicant avers that it neither passed a resolution for the application or disbursement of any loan facilities nor sanctioned its property known as L.R No. Nakuru Municipality Block 8/67 to be used as collateral for the purported loan.

7. It is the Applicant's case that from the documents supplied by the 1st Respondent it appears the loan facilities were sought by a different company and it was remitted to it without its knowledge or involvement.

8. The Applicant asserts that the substantial amount of money pegged on a property that houses its business is at stake herein and if the intended sale is allowed to proceed before hearing the merits of this case it would be greatly prejudiced.

9. The Applicant believes that in view of the aforementioned facts the bulky documents fronted by the 1st Respondent require forensic examination.

10. The Applicant also contends that from the notices annexed to the 1st Respondent's replying affidavit, it appears the same were sent to only two of its directors and there is no proof that it received them. The Applicant doubts the authenticity or validity of the resolutions allegedly passed by its board appearing at pages 341 and 345 of the 1st Respondent's documents for reasons that the same were not signed by all the directors who were in attendance and no explanation has been given for their failure to do so.

11. In view of the foregoing, the Applicant posits that disposing the property on such suspicious grounds would amount to irreparable loss and the damages to cater for any unlawful/ unjustified loss would be insufficient as the loss of business would not be quantifiable given the unpredictability of earnings in the business/economic platform.

12. The Applicant further posits that the balance of convenience lies in preserving the status quo in view of the sums involved, the allegations fronted and the nature and use of property at the moment, including the fate of employees working in the premises.

13. The Applicant thus prayed that in the interest of justice the Application be allowed so as to enable parties extensively ventilate on all issues raised and it believes no prejudice will be occasioned to the Respondent if the Application is allowed.

The 1st Respondents' Case

14. The 1st Respondent's case is that the instant application is fraught with non-disclosure of material facts, suppression of truth, is wholly intended to mislead this Honourable Court and is a classic example of abuse of process.

15. It avers that on diverse dates in the year 2014, the Applicant approached it and requested for a credit facility, and that vide a letter of offer dated 16th January,2014, it issued the Applicant an

overdraft of Ksh. 26,000,000/=, a term loan of Ksh. 12,000,000/= to finance the construction on L.R No. 12715/340, a term loan of Ksh. 60,000,000/= to facilitate amalgamation of previous terms loans and import a door making machine and working capital and a letter of guarantee to a limit of Ksh.8,000,000/= to facilitate issuance of Bid Bonds, performance bonds and advance payment guarantees.

16. The 1st Respondent avers that the above facilities were to be secured by inter alia; further legal charge to an aggregate sum of Ksh. 90,000,000/- over property Title Number Nakuru/Municipality/Block 8/67 registered in the name of the plaintiff herein; first legal charge for the sum of Ksh. 12,000,000/= over property L.R No. 12715/3401, Machakos, transferred to the Principal Borrower; Further Fixed and Flouting debenture for the sum of Ksh. 90,000,000/=, additional Ksh. 40,000,000/= over all the assets of the Applicant borrower; Board Resolutions by the Directors of the Plaintiff approving the borrowing of the facilities and the creation of the securities securing the facility; and Corporate Guarantee and Indemnity of Yangguang Property Design and Manufacturing Limited, a sister company of the Plaintiff herein, along with resolution of its Board of Directors authorizing the borrowing and issuance of the securities.

17. The 1st Respondent avers that on diverse dates in the year 2015, Yangguang Property Design and Manufacturing LTD "the principal borrower" approached it and requested for a credit facility. Vide a letter of offer dated 13th March, 2015, it issued to the Principal Borrower a term loan of Ksh. 40,000,000/- to facilitate acquisition of Bellevue Development Co. LTD and a letter of Guarantee to a limit of Kshj. 50,000,000/- to facilitate issuance of guarantee on behalf of the company in favour of Josephat Mureithi Mutugi & Zipporah Muthoni Mutugi. That additionally on the diverse dates in the year 2015, Yangguang Property Design and Manufacturing LTD "the principal Borrower" approached it and requested for a credit facility. Vide a letter of offer dated 27th July,2015, it issued to the principal borrower a term loan dated 27th July,2015 of Ksh. 40,000,000 to facilitate acquisition of Bellevue Development Company LTD, letter of guarantee to a limit of Ksh. 50,000,000/- to facilitate issuance of guarantee on behalf of the company in favour of Josephat Mureithi Mutugi & Zipporah Muthoni Mutugi and an asset Finance Facility of Ksh. 6,000,000/= to facilitate purchase of a Toyota Land Cruser Prado from Signatures Cars Limited.

18. That the Applicant and the principal Borrower approached it on several occasions for restructure of the facilities and due to their relationship, it agreed to all these requests and forthwith granted the facilities via various letters of offer.

19. The 1st Respondent states that on the said request for restructure and vide a letter of offer dated 15th March, 2022, it granted to the Principal Borrower further facilities i.e. Renewal of overdraft limit of Ksh. 30,000,000/= to be utilized to pay off the amount of Ksh. 10,000,000/= being a TOD advanced under the Plaintiff and the balance to be used as working capital; Short term loan of Ksh. 50,000,000/- to finance importation of steel for the Borrowers Lamu Project; Asset Finance of Ksh. 8,360,000/= to facilitate 80% financing of Prime Mover Truck Mercedes Benz Actros 2545 from Heavy Vehicles & Plant Suppliers Limited and a drop side high sided trailer from Sohan Singh Josh & Sons Limited; Advance payment guarantee of USD 78,301.01 to issue advance payment guarantee on behalf of the borrower in favour of Keda Ceramic Company Limited for labour contract Ref. No. KBY20210920.; Advance Payment Guarantee of USD 20,959.74/= to issue advance payment guarantee on behalf of the borrower in favour of Sunda (Kenya) Industrial Company Limited; and short term loan of Ksh. 20,000,000/= to finance working capital.

20. The 1st Respondent contends that whilst it provided the facilities to the Principal Borrower and the plaintiff via securities of the plaintiff herein, the principal borrower conducted the same in poor

fashion, and owing to the perennial default in repayment, it was left with no option but initiate recovery process in strict adherence to the law.

21. That pursuant to Clause 16 of the Letter of offer dated 15th May,2021 on "Notices" vide a letter dated 12th July,2023, it wrote to the plaintiff demanding payment of the total outstanding amount of Ksh. 136,338,191.63/= as at 11th July,2023 inclusive of the interest accrued within one month from the date of service which demand elicited no response.

22. That vide a letter dated 4th October 2023, it issued statutory Notice under Section 90 of the *Land Act* 2012, with regard to Property Title Number Nakuru Municipality Block 8/67 in the name of Xiang Hui International (K) LTD, and vide a letter dated 20th November,2023 the principal borrower Yangguang Property Design & Manufacturing LTD wrote a letter requesting for restructuring of the loan which was outstanding at Ksh. 141,335,501.63 and requested for a further short-term loan of Ksh. 30,000,000/=. However, based on the its default in the existing facilities it declined the request.

23. The 1st Respondent asserts that vide a letter dated 24th January,2024, it issued the 40 days' notice to sell pursuant to Section 96(2) of the *Land Act* with regard to property Title Number Nakuru Municipality Block 8/67 in the name of Xiang Hui International (K) LTD.

24. It is the 1st Respondent deposition that pursuant to the statutory notices issued under Section 96 of the *Land Act* 2012 , it caused a valuation on the Charged Property to be conducted and a valuation report dated 5th July,2023 was conducted, issued the notification of sale with the schedule of immovable properties and the 45 days redemption dated 23rd March,2024 to both the Plaintiff and its directors pursuant to Rule 15 of the Auctioneer's Rules 1997, and due to lack of response from the plaintiff and its directors , it instructed the 2nd Respondent to advertise the property for auction on 29th May,2024 in a newspaper of nationwide circulation.

25. The 1st Respondent avers that upon service of the said notices, the plaintiff proceeded to file the present suit seeking to stop the intended auction on allegations that the same would be unlawful because it had never made a resolution to acquire or guarantee any facility with it.

26. The 1st Respondent contends that the outstanding amount as at 18th June, 2024 is Ksh. 162,961,009.63 and the same continues to accrue interest and penalty for non-payment by the plaintiff.

27. The 1st respondent states that the applicant is feigning ignorance of a transaction it was not only privy to it but also a pertinent party to it.

28. Regarding the Applicant's assertion that it did not pass any resolution to take or guarantee a loan facility, the 1st respondent avers that the Applicant was aware of the transaction and all notices was served on it.

29. The 1st Respondent further avers that the Applicant's assertion that efforts made to understand the genesis of the facility were rendered futile cannot hold as it was at all material times served with demand and notices and as such the Applicant has approached this court with unclean hands in an attempt to deny it the rights as enshrined under the *Land Act*.

30. The 1st respondent deposes that the applicant's averment that it will suffer irreparable loss is unsupported by evidence and that in any event it has many branches across the country that have capability to compensate the Applicant for any damages.

31. The 1st Respondent posits that the Application does not meet the threshold for the grant of injunctions as per Giella Vs Casman Brown Ltd (1973) EA 358, and also contravenes the settled principles in Mrao Limited v First American Bank of Kenya Ltd and others [2003] KLR 125.

32. The 1st respondent thus urged the Court to dismiss the application with costs to it.

33. On 3rd July,2024, the court directed that the instant application be disposed off by way of written submissions. However, at the time of writing this ruling only the 1st Defendant/Respondent had complied.

1st Respondent's Submissions

34. On whether the Intended sale is legal, the 1st Respondent submitted that it is not questionable that the Applicant and the Principal Borrower indeed took facilities and guaranteed facilities over their sister companies' facilities and upon default in repayment, it began recovery process via issuance of a Demand Letters apprising the Applicants of the total outstanding amount and the period within which to comply with repayment.

35. In view of the above, the 1st Respondent submitted that it acted lawfully as it complied with the provisions of the Section 90 and 96 of the *Land Act* 2012 in its attempt to recover the defaulted loan facility. In support of its submissions, the Applicant relied on East Africa Ventor Co. Ltd v Agricultural Finance Co-op Ltd & another [2017] eKLR & Bestell Computers Limited v Grofin Africa Fund & 3 others [2017] eKLR

36. With regard to whether the Applicant has fulfilled the requirements for grant of an injunction and whether the Application should be allowed, the 1st Respondent cited the case of Giella v Cassman Brown and Co Ltd (supra) on the principles of granting of a Temporary Injunction and the case of Mrao Limited v First American Bank of Kenya Ltd and others [2003] KLR 125 on the definition of prima facie case, and submitted that the Applicant has not established a prima facie case as it did not lead any evidence to demonstrate infringement of its rights .

37. The 1st Respondent submitted that it has demonstrated that the Applicant applied for loan facility from it and as such the Applicant's suit is founded on falsehoods. The 1st Respondent argued that the Applicant's contention that it never applied for any facility amounts to non- disclosure of material facts required of an applicant seeking injunctive orders. The 1st Respondent referred this court to the case of Kenleb Cons Ltd vs New Gatitu Service Station Ltd & another, (1990) eKLR for the proposition that an applicant must make full and frank disclosure of relevant facts in order to succeed in an application for an injunction.

38. The 1st Respondent argued that the Applicant's assertion that its efforts to understand the genesis of the loan facility from it bore no fruit is unsubstantiated as the Applicant did not adduce any evidence of requisition and its denial. On this ground, the 1st Respondent submitted that the Applicant has approached this court with unclean hands and has failed to demonstrate the existence of a prima facie case and therefore it is undeserving of the injunctive order sought. The respondent submitted that on this account alone the Application ought to be dismissed. To buttress this position, the 1st Respondent relied on the case of Naftali Ruthi Kinyua -Vs- Patrick Thuita Gachure & another [2015] eKLR

39. The Respondent submitted that the Applicant has not demonstrated the actual and substantial irreparable harm it will suffer that cannot be remedied by an award of damages. The 1st Respondent cited the case of Nguruman Limited v Jan Bonde Nielsen & 2 others (2014) eKLR for the proposition that if damages recoverable is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted however strong the Applicants's claim may appear at that stage.

40. The 1st Respondent contended that the Applicant having defaulted in its obligations to it cannot now seek that it be restrained from selling the property on the basis of suffering an irreparable harm. To buttress this position, the 1st Respondent relied on the case of Kitur v/s Standard Chartered Bank & 2 others (2002) 1 KLR 630.

41. The 1st Respondent argued that it is a successful commercial bank with branches across the country and has the capacity to compensate the Applicant in the event the suit eventually succeeds. To this end, the 1st Respondent relied on the cases of Stek Cosmetics Limited v Family Bank Limited & another [2020] eKLR & Thomas Nyakamba Okongo vs Cooperative Bank of Kenya Ltd [2012] eKLR.

42. On the last limb of balance of convenience, the 1st Respondent submitted that if the injunction is granted it will inflict greater hardship on it as the outstanding debt shall continue to remain unpaid and shall keep accumulating interest whereas if injunction is denied and it is found that the Applicant was entitled to the same, it can easily compensate the Applicant for any loss occasioned owing to the fact that it is a reputable bank capable of doing so. In support of this submission, reliance was placed on Charity Njeri Kanyua v Trevor Kent [2016] eKLR; Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR; Obadiah Mutisya Kitonyi v Kenya Commercial Bank Ltd & another [2020] eKLR; Thathy v Middle East Bank (K) Ltd & another [2002] 1 KLR 595; & John Nduati Kariuki t/a Johester Merchants v National Bank of Kenya Ltd [2006] eKLR

43. On costs, the 1st Respondent referred this court to the case of Kay Construction Company Limited v Eco Bank Kenya Ltd & 6 others [2015] eKLR for the proposition that costs follow the event and prayed that the Application be dismissed with costs to it.

Issues for determination

44. Having considered the present application, the affidavits in support and opposition of the said application, as well as the submissions on record, it is my view that the single issue for determination is whether the Applicant is entitled to the orders sought.

Analysis

45. The Prayers pending determination are prayers 3 to 6. It is clear from prayer no. 3 that the Applicant has not sought any temporary injunction pending the hearing of the suit. The said prayer is limited to an injunction pending the hearing of the application. For avoidance of doubt prayer no. 3 is worded as follows: -

> " This Honourable Court be pleased to issue an interim injunction pending the hearing and determination of this Application restraining the defendants by themselves, their agents and or assigns, or any of them from selling or disposing or otherwise interfering with Land parcel No. Nakuru Municipality/Block 8/67"

46. Since the Application has now been heard it follows that the said prayer is now spent.

47. Prayer no. 4 is with respect to supply of the documents pertaining the loan facility. I have perused the 1st Respondent's Replying affidavit and I note that it has annexed the said documents. Those are the letters of offers and copies of loan securities. The same have been annexed and marked as LO1-5. The Applicant in their further affidavit has acknowledged this and intimated that the same should be subjected to a forensic examination. In light of the above, this prayer is similarly now spent.

48. The procedure for the grant of temporary injunction is provided under Order 40 of the Civil Procedure Rules –Rule 1(a) & (b).The important consideration before granting a temporary injunction under

this order is the proof that any 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 or that the defendant/respondent threatens or intends to remove or dispose the property, the court is in such a situation enjoined to grant a temporary injunction to restrain such acts.

49. The conditions for consideration in granting an injunction were settled in the celebrated case of Giella v Cassman Brown & Company Limited (supra), where the court expressed itself on the condition's that a party must satisfy for the court to grant an interlocutory injunction as follows: -

> " Firstly, 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."

50. In Mrao Ltd -vs- First American Bank of Kenya and 2 others, (supra) the Court defined a prima facie case as: -

> " A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later".

51. Has the plaintiff/ applicant herein established a prima facie case? It is not in doubt that the Applicant is the registered owner of parcel no. Nakuru Municipality/Block 8/67. The Applicant has not attached any document to ascertain this Position however the 1st Respondent at page 412 of its documents has annexed a certificate of lease confirming this position. It is undisputed that through the instructions of the 1st Respondent, the 2nd Respondent has already advertised the aforementioned property for public auction. It is the 1st Respondent's case that it advanced loan facility to the Applicant and its principal borrower and they defaulted in repayment. This position is challenged by the Applicant. According to the Applicant it has never made a resolution to acquire loan facility from the 1st Respondent or guarantee any of its facility as security for the purported loan. The Applicant's indebtedness to the 1st Respondents has been vehemently denied. I have considered the parties' averments and the 1st Respondent's submissions in this regard. The issues raised by both parties are contentious and contradictory statements of facts that cannot be determined at this stage. The same can only be substantively determined at the main hearing. In Airland Tours and Travel Ltd...Vs...National Industrial Credit Bank, Milimani HCCC No.1234 of 2003, the Court held that: -

> " In an Interlocutory application, the Court is not required to make any conclusive or definitive findings of facts or law, most certainly not on the basis of contradictory affidavit evidence or disputed proposition of law."

52. However, the Applicant as the registered owner of the land in issue is deemed to have interest over it and given the issue raised and the reasons above, I believe the Applicant has successfully established a prima facie case with probability of success.

53. As regards the second point that of irreparable damage, the general principle of law in this regard is that the court of equity would only grant interlocutory injunctive relief where an award of damages for

injury or harm is said to be inadequate. The court in the American Cyanamid Versus Ethicon Limited 1975 1ALL ER 504 re-stated the principle in the following language on inadequacy of damages:

> " If damages in the measure recoverable are common law could be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff claim appeared to be are at that stage".

54. In Halsbury's Laws of England, 3rd Edition volume 21, paragraph 739 page 352 irreparable injury is defined as:

> " Injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by grant of injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the injury in respect of which relief is sought is likely to destroy the subjected matter in question."

55. The 1st Respondent submitted that the Applicant has not demonstrated that it will suffer loss which is not compensable in damages if the injunctive reliefs sought are denied. The 1st Respondent has also indicated it is capable to compensate if the need arises owing to the fact that it is a reputable bank with branches across the country. The Applicant on its part contends that it will suffer irreparable loss if injunction is denied as the 1st Respondent's case is premised on suspicious grounds and the damages to cater for any unlawful/ unjustified loss would be insufficient since the loss of business would not be quantifiable given the unpredictability of earnings in the business/economic platform. It is not hidden that the Applicants' property is at risk of being disposed off through public auction. The Applicant alleges that its property was charged in favor of the 1st Respondent without its permission or knowledge. The issues raised by both parties in this regard are weighty and ought to be resolved first. It is uncontroverted that the Applicant operates its business on the property in dispute and I am persuaded that it has established that it will suffer irreparable loss as its business will be paralyzed and fate of its employees left at the mercy of the outcome of the suit. If injunction is denied, it is highly likely that its business will shut down for a considerable length of time. The shut down or collapse of a business is certainly not a damage that can be remedied by way of damages. As such, it is in the interest of Justice that the honourable court grants interim reliefs at the very least to preserve the business and livelihoods of the Applicant's employees.

56. Thirdly, the Plaintiff/Applicant has to demonstrate that the balance of convenience tilts in its favour. Concept of balance of convenience was defined in the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR as:

> " The meaning of balance of convenience will favour of the Plaintiff' is that if an injunction is not granted and the Suit is ultimately decided in favour of the Plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the Defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them will be greater than that which may be caused to the Defendants. Inconvenience be equal, it is the Plaintiff who will suffer.In other words, the Plaintiff has to show that the comparative mischief from the inconvenience which is likely

to arise from withholding the injunction will be greater than that which is likely to arise from granting"

57. In light of the issues raised by both parties, the Court finds that the balance of convenience tilts in favour of maintaining the status quo. It is not in doubt that this matter raises serious conflicts of facts. Further it is not in doubt that a temporary injunction is meant to preserve and protect the suit property. In the case of Exclusive Estates Lt Vs. Kenya Posts & Telecommunications Corporation & Another, Civil Appeal No.62 of 2004 the court held that: -

> " A temporary injunction is issued in a suit to preserve the property in dispute in the suit of the rights of parties under determination in a suit pending the disposal of the suit, to preserve the subject matter"

58. Further in the case of Virginia Edith Wambu Vs. Joash Ochieng Ougo, Civil Appeal No.3 of 1987 (1987) eKLR, the Court of Appeal held that: -

> " The general principle which has been applied by this court is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided on a trial."

59. In Amir Suleiman – Versus - Amboseli Resort Limited [2004] eKLR the Learned Judge offered further elaboration on what is meant by "balance of convenience" and stated

> " The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice."

60. With the above in mind, I am persuaded that there is a lower risk in granting orders of temporary injunction than not granting them as the court waits to hear the suit on its merit. During the full trial, the court will have an opportunity to interrogate all the documents that might be relevant in providing a history and/or chronology of events leading to disbursement of loan facilities by the 1st Respondent and the use of the Applicant's property as security for the said loan.

61. In view of the prevailing circumstances and based on prayer no. 5, I allow the Application as follows: -

    a. An order of temporary injunction be and is hereby issued restraining the defendants by themselves, their agents and or assigns, or any of them from selling or disposing or otherwise interfering with land parcel No. NAKURU MUNICIPALITY/BLOCK 8/67 pending hearing and determination of this suit, but in any event for not more than 90 days.

    b. The plaintiff shall, within the 90 days ensure that directions on the suit are taken and the suit is set down for hearing.

    c. Costs of the application shall abide by the outcome in the main suit to the successful party.

    d. Orders accordingly.

SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 2ND DAY OF DECEMBER, 2024.

H. M. NYAGA

JUDGE.