



Paragon Electronics Limited v Investments and Mortgages Bank Limited (Civil Case 8 of 2016) [2021] KEHC 137 (KLR) (Commercial and Tax) (14 October 2021) (Ruling)

Neutral citation: [2021] KEHC 137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 8 OF 2016
F TUIYOTT, J
OCTOBER 14, 2021**

BETWEEN

PARAGON ELECTRONICS LIMITED APPLICANT

AND

INVESTMENTS AND MORTGAGES BANK LIMITED RESPONDENT

RULING

1. In a Ruling dated 27th September 2016 Hon. Ochieng J held:-

“(38) In other words, I find and hold that the respondent cannot impose any conditions to the execution and delivery up to the applicant, of the Discharge of Charge; the Memorandum of Satisfaction of the Debenture; the Reconveyance of Mortgage; and the delivery up to the Originals of the Debenture; Further Debenture; the Charge; the Mortgage; the Guarantee and the Original Lease in respect of Block 1C on L. R. No. 209/16027.”

The Judge made further orders that the Respondent had no more than 7 days to comply.

2. When asked by the parties to clarify the effect of that order, the Honourable Judge, on 30th September 2020, stated:-

“The order is clear, that if the Defendant failed to comply with prayer 1, the Deputy Registrar of the High Court would execute all the requisite documents.”

3. It is common ground that the order has not been complied with and there is a blame game between the parties as to who is responsible for that state of affairs. On its side the plaintiff, vide a Notice of Motion dated 21st November 2019, has sought, inter alia, that the directors of the Defendant Bank be cited for



contempt of those orders. That application is yet to be heard, and in the meantime, the plaintiff has brought another application dated 24th January 2021 for the following orders:-

1. THAT this application be certified urgent and be heard ex parte at the first instance for the grant of prayer 2 and 3 below.
 2. THAT pending the hearing and determination of this Application the Defendant by itself, its representatives, its debtors and/or assignees be and are hereby restrained from dealing, appropriating, selling, transferring or otherwise alienating Land Reference Number. 209/19116 and L.R No. 209/19115 (formerly known as L.R. No. 209/16027).
 3. THAT pending hearing and determination of this application this honorable court be pleased to restrain the Registrar of Lands from accepting, approving, registering or otherwise sanctioning any sale, transfer, appropriation or such other alienation of L.R No. 209/19116 L.R No. 209/19115 (formerly known as L.R. No. 209/16027).
 4. THAT pending the hearing and determination of the Contempt application herein the Defendant by itself, its representatives, its debtors and/or assigns be and are hereby restrained from dealing, appropriating, selling, transferring or otherwise alienating L.R No. 209/19116 L.R No. 209/19115 (formerly known as L.R. No 209/16027).
 5. THAT pending hearing and determination of the Contempt application herein this honorable court be pleased to restrain the Registrar of Lands from accepting, approving, registering or otherwise sanctioning any sale, transfer, appropriation or such other alienation of L.R No. 209/19116 L.R No. 209/19115 (formerly known as L.R. No. 209/16027).
 6. THAT the Defendant to bear the costs of this Application on full indemnity basis.
4. It is this application that this Court is asked to determine.
 5. The plaintiff asserts that, so as to defeat the Court order, the Bank has subdivided L.R. No. 209/16027 into two new titles namely L. R. No. 209/19116 and L. R. No. 209/19115, the effect being that the lease which is the subject of the case and the contempt proceedings has ceased to exist. As I understand it, the objective of the application is to have the two titles which result from L.R. No. 209/16027 preserved until the hearing of the contempt proceedings.
 6. In responding to the application, the Bank filed a replying affidavit sworn by Andrew Muchina on 19th February 2021 and grounds of opposition. In that reply, the Bank, partly argues against the merit of the contempt application. I am not too certain that occasion has reached to do so.
 7. What the Bank does not dispute is that the suit land has been subdivided with two resultant titles. While it is true that a final judgment was made here, it is equally true that the order of the Court has not been implemented. Who is to blame for this state of affairs shall be determined in the contempt proceedings. For now, it seems a reasonable and just thing is to ensure that the subject matter of the proceedings is not put beyond the reach of the Court as courts do not make orders in vain. Whilst the Bank has through the affidavit of Mr. Muchina (see paragraph 10) assured that it does not intend to deal, appropriate, sale, transfer or otherwise alienate the suit 'properties', I have no doubt that protection of the suit property is better achieved by a Court order rather than the word of a party.



8. I allow prayers 4 and 5 of the Notice of Motion of 24th January 2021. Costs shall abide the outcome of the contempt proceedings.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE

PRESENT:

