



**Asego Holdings Limited v Mayfair Bank Limited & 2 others; Okundi
(Interested Party); Sololo Segem Limited (Proposed Interested Party) (Civil
Case E005 of 2022) [2025] KEHC 14564 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL CASE E005 OF 2022
BK NJOROGE, J
OCTOBER 9, 2025**

BETWEEN

ASEGO HOLDINGS LIMITED PLAINTIFF

AND

MAYFAIR BANK LIMITED 1ST RESPONDENT

LEGACY AUCTIONEERS 2ND RESPONDENT

AND

WATTS AUCTIONS DEFENDANT

AND

EDWARD KENNETH OTIENO OKUNDI INTERESTED PARTY

AND

SOLOLO SEGEM LIMITED PROPOSED INTERESTED PARTY

RULING

1. This is a Ruling in respect of the Plaintiff's Application by way of a Notice of Motion dated 28th April, 2025.

Background Facts

2. The Plaintiff herein charged House No. 26 on L.R. No. 330/475, Lavington, to the bank as security for financial facilities issued to the 1st Interested party. After default, the bank sought to exercise its statutory power of sale, prompting the Plaintiff to file a suit in January 2022 seeking to restrain the



sale. Although the Court initially issued status quo orders, they later lapsed, leading the Plaintiff to seek reinstatement.

3. Despite a conditional order requiring payment of Kshs. 7 million to stop a scheduled auction, the bank proceeded with the sale after not receiving the funds on time. The Plaintiff's contempt application was dismissed in December 2024, with the Court holding that the auction was valid. Dissatisfied, the Plaintiff filed an Appeal and sought interim conservatory orders. During the Appeal, it emerged that the initial auction had been cancelled after the bidder withdrew, and a new sale was conducted in March 2025 where Sololo Segem Limited became the successful bidder, having paid a Kshs. 50 million deposit.
4. The Applicant/Plaintiff has now filed the Notice of Motion dated 28th April 2025, seeking: -
 1. Spent
 2. Spent
 3. Spent
 4. That Leave be granted to join the Proposed 3rd Defendant / Respondent and Proposed 2nd Interested Party as parties to this suit.
 5. That pending the hearing and determination of Nairobi Civil Appeal (Application) No. E013 of 2025, this Honourable Court be pleased to issue orders arresting the transfer of House Number 26 erected on L.R. No. 330/475, Thomson Estate, Lavington, sold on 12th March 2025.
 6. That pending the hearing and determination of Nairobi Civil Appeal No. E195 of 2025, this Court be pleased to issue orders arresting the transfer of House Number 26 erected on L.R. No. 330/475, Thomson Estate, Lavington, sold on 12th March 2025.
 7. That this Honourable Court be pleased to issue a declaration that the auction conducted on 12th March 2025 over House Number 26 erected on L.R. Number 330/475, Thomson Estate, Lavington was illegal, null and void ab initio and of no legal consequence whatsoever.
 8. That the costs of this application be provided for.

The Application was supported by the grounds on its face, and the affidavits sworn by Edward Kenneth Otieno Okundi on 28th April 2025, 26th May 2025 and on 3rd June 2025.

5. In response, the 1st and 2nd Defendants filed a Replying Affidavit sworn by Lynette Kamande on 26th May 2025.
4. Equally, the 2nd Interested Party filed a Replying Affidavit sworn by Kipyegon Kipkoech on 29th May 2025.

Issues for determination

4. The Court has carefully considered the submissions, the Application and the responses therewith and frames the following issues for determination;
 - a. Whether leave should be granted to join the Proposed 3rd Defendant / Respondent and Proposed 2nd Interested Party as parties to this suit.



- b. Whether an injunction should issue against the transfer of House Number 26 erected on L.R. No. 330/475, Thomson Estate, Lavington, sold on 12th March 2025.
- c. Whether the auction sale was valid.

Analysis

a. Whether leave should be granted to join the Proposed 3rd Defendant / Respondent and Proposed 2nd Interested Party as parties to this suit.

8. Under Order 1 Rule 10(1) of the Civil Procedure Rules, the Court may order that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added
9. In the Application, the Plaintiff sought leave to join the proposed 3rd Defendant and proposed 2nd Interested Party as parties to this suit. Notably, the Defendants did not oppose the joinder of the proposed 3rd Defendant or the 2nd Interested party.
10. In *Meme v Republic*, [2004] 1 EA 124 the Court set out that a person may be joined based on the following reasons: -
 - “(i) because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - (ii) to protect the rights of a party who would otherwise be adversely affected in law;
 - (iii) to prevent a likely course of proliferated litigation.”

8. In the present case, the 3rd Defendant is an Auctioneer who was instructed to oversee the auction sale set for 12th March 2025 while the 2nd Interested Party was the highest bidder at the auction.
9. In view of the foregoing, the Court is satisfied that, this being an application challenging the above-mentioned sale by auction, the joinder of the proposed 3rd Defendant and the 2nd Interested Party is necessary for the protection of their rights, complete settlement of all the questions involved in the proceedings and to prevent a likely course of proliferated litigation.
10. Thus, they are joined in the proceedings and the Replying Affidavit filed by the 2nd Interested Party is deemed to be properly on record.

b. Whether an injunction should issue against the transfer of House Number 26 erected on L.R. No. 330/475, Thomson Estate, Lavington, sold on 12th March 2025.

8. The Plaintiff urged the Court to grant injunctive relief to restrain the bank or its agents from transferring or disposing of the suit property pending the hearing and determination of its application and Appeal before the Court of Appeal.
9. In submissions, the Plaintiff also indicated that it is apprehensive that the Defendants will proceed to finalize the transfer of the suit property to the purported purchaser, thereby rendering the pending Appeal nugatory and a mere academic exercise. That this would deprive its constitutional right to be heard. That there is a real risk of its eviction as the bank has since written to it demanding that it vacate the suit premises on or before 2nd May 2025.



10. In contrast, the Defendants raised the question of jurisdiction and sub judice. The Court, through the Ruling of 27th May 2025 held that the High Court and the Court of Appeal have concurrent jurisdiction on interim reliefs pending appeal.
11. Further to the above, the Defendants and the 2nd Interested Party asserted that the transfer of the property is completed and the title issued to the 2nd Interested Party. A copy of the title was exhibited. The Plaintiff did not controvert this position.
12. The transfer that the Plaintiff seeks to be prevented by way of injunction has already occurred. Therefore, the Court finds that prayers 5 and 6 have been overtaken by events. The Court cannot arrest an event that has already occurred.

a. Whether the Auction Sale was valid.

8. The Plaintiff sought a declaration that the auction conducted on 12th March 2025 over the suit property was illegal, null and void ab initio and of no legal consequence whatsoever.
9. The Plaintiff challenged the validity of the auction sale of 12th March 2025 by advancing multiple grounds. It faulted the bank for failing to inform it of the change of the auctioneer. It also faulted the bank and the auctioneer for failing to issue a fresh 90-day statutory notice of sale and the auctioneer's 45-day notice. The Plaintiff further faulted the auctioneer for placing the advertisement for the public auction in a newspaper of less reach.
10. On the other hand, the Defendant argued that statutory notices only need to be issued once. It argued that the Plaintiff's contention that it was entitled to be notified of the initial purchaser's withdrawal is without legal or factual basis.
11. Moreover, the Defendants contended that the Plaintiff did not plead the doctrine of lis pendens but mischievously introduced it through submissions. They also asserted that lis pendens has no application to charges and the exercise of statutory powers of sale.
12. The Plaintiff also claimed that the 2nd Interested party did not meet the deadline for payment before the auction date. However, the Defendants asserted that the SWIFT message produced as Exhibit EO-12 was clear that KCB paid KES 50,000,000/- to the 1st Defendant on 11th March 2025. They also asserted that until the auction was successfully concluded and the successful bidder had entered into the memorandum of sale, the deposit received could not be applied to the debt owed.
13. The Plaintiff lamented that no fresh valuation of the suit property was conducted prior to the second auction. However, the Defendants submitted that the issue of whether the valuation was done within a reasonable time is an issue for a full trial.
14. On this issue the Court agrees with the Defendants that the issue of the validity of the second auction is a matter for determination upon the hearing of the main suit.
15. In the upshot, the Plaintiff's Application is partially successful only to the extent that joinder of the Proposed 3rd Defendant / Respondent and Proposed 2nd Interested Party as parties to this suit is hereby allowed.
16. As to costs the same lie at the discretion of this Court. The fair order that renders itself to this matter is that let each party bear its own costs of the Application.



Determination

8. The Application by the Plaintiff by way of a Notice of Motion dated 28th April, 2025 is partially allowed in the following terms;
 - a. THAT leave be and is HEREBY granted to join the Proposed 3rd Defendant / Respondent and Proposed 2nd Interested Party as parties to this suit.
 - b. THAT prayers 5,6 and 7 of the aforesaid Application are dismissed for lack of merits.
 - c. THAT each party to bear its/his own costs of the Application.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 09TH DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Mureithi for the Plaintiff/Applicant.

Mr. Mweke for the Defendants/Respondents.

Mr. Tirop with Mr. Kibet Kirui for the 2nd Interested party.

Mr. Peter Wabwire– Court Assistant.

