

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
COMMERCIAL CASE NO. E016 OF 2024

**TROY MEDICARE PHARMACY
LIMITED.....PLAINTIFF/RESPONDE
NT**

VERSUS

**EQUITY BANK KENYA LTD.....1ST
DEFENDANT/APPLICANT
PHILLIPS INTERNATIONAL
AUCTIONEERS.....2ND
DEFENDANT**

R U L I N G

Brief facts

1. The application for determination dated 8th October 2025 seeks for the orders of discharging and setting aside of orders dated 22nd May 2025 or in the alternative the applicant be at liberty to proceed with the exercise of its power of sale upon serving the notices required under Section 90 and 96 of the Land Act.
2. The application is unopposed.

The 1st Defendant/Applicant's Case.

3. The applicant herein avers the court rendered its ruling on 22nd May 2025 granting an interlocutory injunction against the applicant and

the 2nd respondent from auctioning or otherwise dealing with the plaintiff's property L.R Number Ruiru East Block 5/253 (Grey Terrace- off Thika Superhighway Kahawa Wendani, Kiambu County) pending the determination of the suit and directed the plaintiff to continue servicing the loan at a monthly rate of Kshs. 600,000/- pending the hearing and determination of the case or at such a time the plaintiff redeems the security.

4. The applicant states that since the order of 22nd May 2025, the plaintiff made a total payment of Kshs. 602,550/- made out as follows:- Kshs. 700/- on 14th June 2025, Kshs. 1,850/- on 2nd July 2025, Kshs. 160,000/- on 9th July 2025, Kshs. 140,000/- on 9th July 2025, Kshs. 155,000/- on 10th July 2025 and Kshs. 145,000/- on 10th July 2025. Thus, the plaintiff is in breach of the orders requiring it to pay Kshs. 600,000/- per month towards the outstanding loan pending the hearing and determination of the suit.

5. The applicant argues that the debt owed by the plaintiff is substantial currently at Kshs. 143,558,446.21/- as at 24th September 2025 and continues to accrue interest. The applicant further argues that it is extremely prejudiced as the amount outstanding exceeds the value of the charged property and the bank is therefore under secured and will not be able to recover the entire outstanding debt from

the sale of the charged property whereas the plaintiff continues to enjoy the protection of injunctive orders which it has disobeyed. Therefore, the applicant urges the court to set aside the orders in the interest of justice.

The Law

Whether the orders sought should be granted

6. **Order 40 Rule 7 of the Civil Procedure Rules** which provides for discharge, variation or setting aside of orders reads as follows:-

Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.

7. The above provision does not stipulate the conditions under which an order of injunction may be discharged, varied or set aside. Courts have through case law developed and prescribed the conditions to be considered before an injunction is discharged, varied or set aside. In **Ochola Kamili Holding Limited vs Guardian Bank Limited (2018) eKLR**, the court held:-

The court is alive to the fact that interlocutory injunction, being an equitable remedy would be discharged upon being shown the person's conduct with respect to matter pertinent to the suit does

not meet the approval of the court which granted the orders which is the subject matter and especially where a party upon getting injunction orders sits on the matter and uses the orders to the prejudice of the opponent. The orders of injunction are mainly intended to preserve the subject matter with a view to have expeditious determination but not to oppress another party nor should an injunction be used to economically oppress the other party, or to deny justified repayment of outstanding loan. That

once such a post injunction behavior is exposed it would in my view be a ground to discharge an injunction because the order obtained would be an abuse of the purpose for which the injunction was granted. No court would allow its orders to be used to defeat the ends of justice.

8. In **Atlas Copco Customer Finance AB vs Polarize Enterprises (2016) eKLR**, the court distilled factors that may be considered when faced with a question of discharge, varying or setting aside of injunction. The court held as follows:-

.....it is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to:

a) Proof that the injunction was obtained by concealment of facts which if presented would

have worked against the granting on the injunction;

b) A radical change in the circumstances of the suit, such that it is no longer necessary to have the injunction;

c) Proof that the general conduct of the holder of the injunction is such that the court is impelled to discharge the injunction, for instance, where the injunction is being used to intimidate the defendant or achieve an ulterior purpose;

d) Proof that the sustenance of the injunction would cause an injustice.

9. The applicant argues that the plaintiff's conduct since the order was made is such that the court is impelled to discharge the junction. It is the applicant's case that since the orders were made requiring the plaintiff to pay a monthly sum of Kshs. 600,000/- , the plaintiff has only paid a sum of Kshs. 602,550/- paid between 14th June 2025 and 10th July 2025. Furthermore, as at 24th September 2025, the outstanding debt is Kshs. 143,558,446.21 which sum continues to accrue interest. Upon perusal of the record, the plaintiff has not opposed the instant application. Counsel for the plaintiff on 29th October 2025 informed the court that the plaintiff had not complied with

the orders to make monthly payments towards the outstanding loan.

10. It is evident that sustaining the injunction would cause injustice to the applicant as the outstanding loan continues to accrue interest. During the hearing of the initial application for injunction, the plaintiff did not dispute that it took various credit facilities with the applicant and that it was in arrears of a substantial sum. The plaintiff only complained of lack of service of the requisite notices whereas the court found service of the said notices to be wanting. These are the 90 days statutory notice under Section 90 of the Land Act, the 45 days redemption notice and notification of sale. However, this omission does not exempt the applicant from serving the outstanding loan for this was the reason for ordering from him to make monthly sums of Ksh.600,000 pending the disposal of this this case. The injunction was granted on condition that the of the monthly payments for the outstanding loan would be made. It was considered that the respondent owed a colossal sum to of over Ksh.110,000,000/=.

11. In that regard, it is my considered view that the applicant has met the threshold to discharge the injunction granted on 22nd May 2025. Allowing the injunction to subsist would amount to the respondent/plaintiff denying the applicant/defendant legal rights of their repayment of the outstanding loan.

12. The application dated 8th October 2025 is hereby allowed in terms of prayer No. 2 of the application.
13. This court directs that the statutory notices be issued to the applicant afresh.
14. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 13TH DAY OF NOVEMBER 2025.***

**F. MUCHEMI
JUDGE**