

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

COMM. CASE NO. E636 OF 2024

BETWEEN

DARI LIMITED.....1ST

PLAINTIFF

RAPHAEL TUJU.....2ND

PLAINTIFF

MANO TUJU.....3RD

PLAINTIFF

ALMA TUJU.....4TH

PLAINTIFF

YMA TUJU.....5TH

PLAINTIFF

S.A.M. COMPANY LIMITED.....6TH

PLAINTIFF

AND

KNIGHT FRANK VALUERS

LIMITED.....1ST DEFENDANT

EAST AFRICAN DEVELOPMENT BANK.....2ND

DEFENDANT

MUNIU THOITHI.....3RD

DEFENDANT

GEORGE WERU.....4TH

DEFENDANT

KERETO MARIMA.....	5TH
DEFENDANT	
BANK OF AFRICA.....	6TH
DEFENDANT	
JOSEPH MUNGAI GIKONYO T/A	
GARAM INVESTMENT AUCTIONEERS.....	7TH
DEFENDANT	
CHIEF LAND REGISTRAR.....	8TH
DEFENDANT	
STEPHEN CHEGE NJOROGE.....	9TH
DEFENDANT	
ULTRA EUREKA LIMITED.....	10TH
DEFENDANT	

AND

THE HON.ATTORNEY GENERAL.....	
INTERESTED PARTY	

RULING

Introduction and Background

1. On 28th October 2024, the Plaintiffs filed the present suit through the plaint dated 25th October 2024 contemporaneously with an application of the same date seeking to obtain interim injunctions preventing the 1st Defendant (“Knight Frank”), the 2nd Defendant (“EADB”) and the 7th Defendant (“the Auctioneers”) from auctioning or transferring two properties owned by the Plaintiffs, that is L.R. No. 11320/3 ; *Entim Sidai Wellness Sanctuary*, off Tree Lane, Karen and L.R. No. 1055/165; *Tamarind Karen and Dari*

Business Park, off Ngong Road, Karen, pending hearing and determination of the suit. On 28th October 2024, the court granted the interim injunction *ex parte* pending hearing and determination of the application.

2. This application and the injunction order triggered the filing of an application dated 5th November 2024 by EADB and the Auctioneers seeking to strike out the application on the ground that the court lacked jurisdiction and that the court do set aside the *ex parte* injunction order. The Plaintiffs then followed up with the application dated 22nd January 2025 seeking summons to the alleged contemnors, being directors of Knight Frank, EADB and the Auctioneers to show cause why they should not be committed to civil jail for failing to comply with the court's interim injunction orders. Further, the Applicants prayed that the court should issue an order revoking any purported registration of a transfer on the *Tamarind Karen* and *Dari Business Park* property. The Plaintiff then filed another application dated 10th February 2025 principally seeking to enjoin the Chief Land Registrar and that the Registrar be directed to register the interim injunction order on the subject titles.
3. When the matter was mentioned on 20th March 2025, the court was informed that EADB had already booked a transfer on the subject

titles and the Plaintiffs then filed **HCCOMM No. E146 of 2025** against the Registrar. They later learnt that the transfer had been registered and they filed another suit, **HCCOMM No. E195 of 2025** against the Registrar, EADB, the Auctioneers and the transferee, the 10th Defendant. The court directed that the parties appear before the Deputy Registrar on 28th April 2025 for pretrial compliance.

4. By their application dated 4th June 2025, the EADB and the Auctioneers also seek to strike out the Plaintiffs' Amended Plaint dated 25th April 2025 on account of the fact that this Court has no jurisdiction to hear and determine the present matter and that in the alternative, the Court strikes out the said Amended Plaint on account of the fact that it is an abuse of process, it is frivolous, vexatious, and will prejudice and delay the fair trial of the suit. The application is supported by the grounds on its face and the supporting affidavit of the CAROL LUWAGA, EADB's Principal Legal Officer, sworn on 4th June 2025. Knight Frank and 6th Defendant ("BOA") also support the application through the affidavits sworn on 8th September 2025 and 22nd January 2026 respectively.
5. The Plaintiffs oppose the application through the replying affidavit sworn on 10th July 2025 by the 2nd Plaintiff. The court directed that the applications be canvassed by way of written submissions which

are on record and together with the pleadings I have considered and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

6. I propose to first deal with the Plaintiffs' application for an injunction which was responded to by EADB through CAROL LUWAGA'S replying affidavit sworn on 4th November 2024. I note that EADB raises a preliminary objection that the injunction application is *res judicata* as the Plaintiffs had previously filed a similar application in **Dari Limited (In Receivership) & another v East African Development Bank & another [2024] KEHC 11681 (KLR)** that was dismissed by the court (Mwangi J.) on 30th September 2024. Having gone through the said application and the court's ruling therein, I am in agreement with EADB that the issues raised by the Plaintiffs in this application have already been adjudicated and are largely *res judicata*. In **Dari Limited (In Receivership) & another v East African Development Bank & another (supra)** the same Plaintiffs sought word-for-word the same injunctive orders to stop the auction of the same two properties, LR No.11320/3, *Entim Sidai Wellnes Sanctuary*, Off Tree Lane, Karen and LR No. 1055/165, *Tamarind Karen and Dari Business Park*, off Ngong, Karen, Nairobi City County. Mwangi J., dismissed that

application on 30th September 2024, finding no *prima facie* case had been established, that there was no irreparable harm demonstrated and that the balance of convenience favored EADB. The Plaintiffs are now re-filing the same application in this suit which is clearly *res judicata*.

7. It is clear from EADB's annexures and I take judicial notice that EADB obtained summary judgment against the Plaintiffs in the High Court of Justice, Business and Property Courts of England and Wales, Queen's Bench Division, Commercial Court, on 19th June 2019 and the Plaintiffs were ordered to pay EADB the sum of USD 15,162,320.95 under the Facility Agreement dated 10th April 2015 and the Guarantee and Indemnity of the same date. This court (Okwany, J.) on 7th January 2020 and 13th February 2020 in **East African Development Bank v Dari Limited & 5 others [2020] KEHC 8216 (KLR)** recognized and registered the English judgment. The Court of Appeal in **Dari Limited & 5 others v East African Development Bank [2023] KECA 454 (KLR)** upheld that decision on 20th April 2023 and the Supreme Court in **Dari Limited & 5 others v East African Development Bank [2023] KESC 90 (KLR)** declined to issue conservatory orders staying the decision of the Court of Appeal. In rulings of the court (Mabeya J., and Mong'are J.,) of 26th September 2024 and 7th

November 2025 in **East Africa Development Bank v DARI Limited & 5 others [2024] KEHC 11273 (KLR)** and **East African Development Bank v Dari Limited & 5 others [2025] KEHC 16473 (KLR)** respectively, it was affirmed that issues around the Facility Agreement are *res judicata* and Kenyan courts cannot revisit them as they had already been determined by the English Court. The Plaintiffs now claim the Facility Agreement is unconstitutional which is a new argument in form, but in substance, it seeks to undo already-finalized judgments regarding validity of the Agreement, the amount owed by the Plaintiffs and EADB's right to realize security. As stated, Courts at multiple levels have already ruled on these matters and raising constitutional issues at this late stage, after losing repeatedly, appears to be a delay tactic and an abuse of process.

8. As further stated, the properties subject of the present injunction application, L.R. No. 11320/3 and L.R. No. 1055/165 are the secured properties under the Facility Agreement. They were also subject to the English judgment enforcement proceedings in Kenya and receivership and contempt proceedings in **HCCOMM Case E469 of 2019** where the court(Kasango J.) on 30th July 2020 ordered that the Plaintiffs should show cause why they should not be committed to civil jail for contempt of the court's orders of 2nd March 2020 and

13th March 2020 as they were found to have denied the receivers access to the two properties. The question of the Contempt of Court orders were equally determined by this court and the Contemnors accordingly sentenced.

9. In summary, the Plaintiffs are essentially asking the court to re-hear an injunction already denied, re-open a debt already adjudicated internationally and recognized domestically and re-litigate the enforceability of security over properties already subject to multiple court orders. I find that the Bank's position and objection is well-founded that this application is a blatant abuse of court process, meant to frustrate its lawful recovery efforts after years of default and litigation. There is no way that the Plaintiff's Amended Plaint dated 25th April 2025 survives and the same is accordingly struck out.

Conclusion and Disposition

10. In the upshot, the 2nd and 7th Defendants' applications dated 5th November 2024 and 4th June 2025 are allowed and the Amended Plaint dated 25th April 2025 and the application dated 25th October 2024 are hereby struck out with costs. The interim orders in place are hereby discharged and vacated forthwith. It is so ordered.

**DATED SIGNED and DELIVERED virtually at NAIROBI this 9th
OF MARCH 2026**

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**J.W.W. MONGARE
JUDGE**

IN THE PRESENCE OF

1. Mr. Mabachi & Mr. Nyamodi for the Plaintiffs/Applicants
2. Mr. Wakhisi holding brief for Prof. Githu SC and Mr. Emmanuel Wetangula for the 1st Respondent.
3. Mr. Wasonga holding brief for Mr. Kahura for the 2nd & 3rd Defendants
4. Mr. Wawire for the 6th Defendant
5. Ms. Kerubo holding brief for Mr. Kiprono for the 10th Defendant
6. Mr. Mwandege for the Interested Party
7. Amos - Court Assistant