

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: W. KARANJA, ACHODE, & MUCHELULE, JJ.A.)

CIVIL APPLICATION NO. E432 OF 2025

BETWEEN

JAYESH UMEDLAL SHANGHAVI.....1ST APPLICANT

NINA JAYESH SHANGHAVI.....2ND APPLICANT

AND

M. ORIENTAL BANK LIMITED.....RESPONDENT

(Being an application for injunction from the Judgment of the High Court of Kenya at Nairobi (F. Mugambi, J.) delivered on the 7th May 2020

in

Civil Suit No. E258 of 2024)

RULING OF THE COURT

1. This is a straightforward application. Good Earth Group Limited obtained a financial facility of Kshs.70 million from the respondent, M. Oriental Bank Limited, using Unit No. 2 on the 5th Floor of Fortis Tower (Title No. I.R. 150477) erected on LR No. 1870/14/50 as one of the securities. The applicants, Jayesh Umedlal Shanghavi and Nina Jayesh Shanghavi, were directors of the borrowing company and guaranteed the facility. The loan was not serviced and grew to Kshs.120,883,498.68. When the respondent sought to realize the security, by advertising the property for sale, the applicants moved the High Court at Nairobi for a conservatory order. The borrowing company had been placed under administration. The court dismissed the application with costs.

2. The applicants were aggrieved. They filed a notice of appeal, following which they filed the present application under **Rule 5(2)(b)** of the **Court of Appeal Rules, 2022, section 3B** of the **Appellate Jurisdiction Act** and **Articles 10(2)(b)** and **159** of the **Constitution** for an injunction to prevent the sale of the property by Spotlight Intercepts Auctioneers, whom the respondent had instructed, pending the hearing and determination of the appeal. In the grounds and the affidavit sworn by the 1st applicant in support of the application, it was contended that the High Court had not given the applicants a fair hearing because their evidence and submissions had not been considered; the doctrine of *lis pendens* dictated that, as long as the matter was still in court, the property be preserved; and the rights of the applicants under **Articles 25(c), 48** and **50** of the **Constitution** had been violated by the decision. The applicants' case was that they had presented an arguable intended appeal and that the sale, if not stopped, would render the appeal nugatory.
3. Wilfred Machini is the respondent's Chief Manager, Credit. He swore an affidavit in reply to oppose the application. According to him, the debt was not contested; the respondent's right to realise the property that had secured the debt was also not under challenge; and therefore, the applicants only intended to frustrate a legal process. That, the applicants had no arguable grounds to enable them obtain the sought injunction, and that the intended appeal was to at risk of being rendered nugatory.

4. Ms. Abok for the applicants filed written submissions which basically highlighted the applicants' case.

5. We have considered the application against the settled principles governing **Rule 5(2)(b)** of the **Court of Appeal Rules, 2022**. The principles are that, first, the applicant has to show that the intended appeal has at least one arguable ground and, two, that unless the sought order is granted, the intended appeal, if successful, would be rendered nugatory (see **Stanley Kang'ethe Kinyanjui -vs- Tony Ketter & 5 Others, Civil Application No. 31 of 2012 [2013] KECA 378 (KLR)**).
6. The decision in **MRAO Ltd -vs- First American Bank of Kenya Ltd & 2 Others [2003] eKLR** was referred to by the trial court, and we reiterate the same, that, a chargee's statutory right to sell the property that had secured a loan crystallizes upon default, provided that the law governing such realization has been followed. In this case, the facility granted to Good Earth Group Limited was not serviced as agreed. The applicants were directors of the company. They had guaranteed the repayment of the facility. They did not honour the guarantee. There was no claim, both here and in the court below, that the respondent had breached any law regarding the process being undertaken to realise the security. Given those circumstances, we do not believe that the applicants have demonstrated any *bona fide* arguable ground that will occupy the minds that will ultimately hear and determine the appeal, if and when it is filed.
7. As to whether the intended appeal, if successful, will be rendered nugatory, if injunction is not granted, we consider

that, when the applicants agreed to have the suit property to be used to secure

the facility, they agreed to have it sold to realise the outstanding facility in case of default. In this private commercial transaction, this pledged security shifted from being a physical asset to a contractual financial asset. The applicants were well aware that in the event of default, the respondent was going to exercise its power of sale, and that under **section 99(4)** of the **Land Act** any loss suffered would be ameliorated by an award of damages (see **Cosmas Kyalo Muthembwa -vs- Cooperative Bank of Kenya Ltd & Another [2017] KECA 140 (KLR)**).

8. In other words, and upon considering the authorities of this Court, including **Kenafriic Matches Ltd -vs- Match Masters Limited, Civil Application No. E092 of 2021 at Nairobi**, we do not find that the intended appeal will be rendered nugatory if an injunction is not granted.
9. We find the application not merited, and dismiss it with costs to the respondent.

Dated and delivered at Nairobi this 30th day of April 2026.

W. KARANJA
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JUDGE OF APPEAL
L. ACHODE
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JUDGE OF APPEAL
A.O. MUCHELULE
.....

“
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

Signed

DEPUTY

REGISTRAR.