



**Sanyi Jitun Sensen Investment Limited & another v Equity Bank Kenya Limited & another
(Environment & Land Case E210 of 2023) [2024] KEELC 342 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E210 OF 2023
LN MBUGUA, J
JANUARY 25, 2024**

BETWEEN

**SANYI JITUN SENSEN INVESTMENT LIMITED 1ST PLAINTIFF
JINGXI NJUNJIE REAL ESTATE DEVELOPMENT COMPANY
LIMITED 2ND PLAINTIFF**

AND

**EQUITY BANK KENYA LIMITED 1ST DEFENDANT
PHILIPS INTERNATIONAL AUCTIONEERS 2ND DEFENDANT**

RULING

1. This ruling relates to the Notice of Motion application dated 12.1.2024 seeking the following orders;
 - “i. i. That the Application herein be and is hereby certified urgent and heard ex-parte at the first instance.
 - ii. That pending the hearing and determination of this Application, an Injunction be and is hereby issued restraining the Defendant’s/Respondents from auctioning the suit properties on the 26th day of January 2023.
 - iii. That pending the hearing and determination of the plaint and suit filed herein, an Injunction be and is hereby issued restraining the Respondent from auctioning the suit properties on the scheduled auction date on 26th January, 2024.
- ii. That costs of the Application be provided for.”
2. The applicant prays for orders set out in prayer no. 2 in the interim pending the hearing of the application. However, the application dated 12.1.2024 was scheduled for the inter-partes hearing on



24.1.2024, of which the court confirmed that the same had been served. The applicants had also filed another application dated 23.1.2024 to activate the earlier application of 12.1.2024. The court will therefore proceed to determine the substantive application at once.

3. I have duly considered the pleadings, the applications and the oral arguments of the applicants. I decline to grant the orders sought for the reasons that the applicant has not approached this court with clean hands and is guilty of material non-disclosure in that;
 1. The applicants have alluded to the suit property being a subject of numerous court proceedings but have not disclosed particulars of the aforementioned cases; See paragraph 17 of the plaint as well as paragraph 10 and 13 of the supporting affidavit to the application.
 2. The applicants admit to having taken a loan facility. In paragraph 24 of the plaint, as well as paragraph 20 of the supporting affidavit, they contend that they had difficulties servicing the loan but they have not disclosed crucial information relating to the amounts so far paid and the balances thereof.
 3. The applicants in their own admission have never enjoyed quiet possession of the suit premises from the time they purchased the same on 24.12.2019. See paragraph 21 of the plaint and paragraph 17 of the supporting affidavit.
 4. At paragraph 19 of the supporting affidavit, the applicants state that “recently, the 1st plaintiff has received a 45 days redemption notice dated 31.10.2023 from the 2nd defendant to which the property will be auctioned on 26.1.2024”. The applicants have not availed the aforementioned notice as an annexure to the supporting affidavit. What more, they have not given particulars of when they received the said notice.
 5. The applicants admit that their agreement with the bank contained an indemnity clause as set out in paragraph 16 of the plaint as well as paragraph 12, 18 and 23 of the supporting affidavit. In particular, the applicants have sought for damages at paragraph 23 of the aforementioned affidavit.
4. In arriving at its verdict, the court has been guided by the decision in the following cases of; *In re Estate of Julius Ndubi Javan (Deceased) [2018]* eKLR on consequences of non-disclosure of material facts, *Nguruman Limited v Jan Bonde Nielsen & 2 Others 2014* EKR where it was stated that a party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected and *Hassan Zubeidi v Patrick Mwangangi Kibaiya & another [2014]* eKLR on the proposition that where damages are an appropriate remedy injunction should not issue.
5. The upshot of the findings of this court is that both the applications dated 12.1.2024 and 23.1.2024 are not merited and are hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Bake for Plaintiff

Court Assistant: Eddel

