



**Mango v Stanbic Bank Kenya Ltd & another (Civil Appeal (Application)  
E481 of 2024) [2025] KECA 192 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 192 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E481 OF 2024  
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA  
FEBRUARY 7, 2025**

**BETWEEN**

**ALFRED OGALO MANGO ..... APPLICANT**

**AND**

**STANBIC BANK KENYA LTD ..... 1<sup>ST</sup> RESPONDENT**

**AMINA MOHAMED ..... 2<sup>ND</sup> RESPONDENT**

*(An application for an order of temporary injunction against the ruling  
and order of the High Court of Kenya at Nairobi (J.W.W. Mong'are,  
J.) dated 16th September 2024 in H.C.COMM. No. E466 of 2023))*

**RULING**

1. In the notice of motion dated 24<sup>th</sup> September 2024 pursuant to Rule 5(2)(b) of the Court of Appeal Rules, 2022, the applicant, Alfred Ogalo Mango, sought the following orders:
  - “1) Spent
  2. The Honourable Court be pleased to grant a temporary injunction restraining the respondents from evicting, harassing, threatening or in any way interfering with the occupation, possession and use of all that property known as apartment no. 5, 3<sup>rd</sup> floor, Block B erected on L.R. No. 2/713 (original land reference No. 2/708) Nairobi, by the Applicant pending the hearing and determination of the intended appeal.
  3. The Honourable Court be pleased to order that the proceedings in Milimani High Court Commercial Case No. E466 of 2023 be stayed pending the lodging, hearing and determination of the intended appeal.



4. The Honourable Court be pleased to order that a priority hearing date be given as the Court's diary may permit once the intended appeal is lodged.
  5. The Honourable Court be pleased to order that the costs of and incidental to this application do abide the outcome of the intended appeal.
  6. The Honourable Court be pleased such further orders as it shall deem appropriate to grant in the circumstances.”
2. This application arises from the dismissal on 19<sup>th</sup> September 2024 of the applicant's application dated 21<sup>st</sup> September 2023 seeking a temporary injunction restraining the respondents, Stanbic Bank Kenya Limited and Amina Mohamed, from interfering with the applicant's occupation and ownership of the suit property, Apartment No. 5 on the 3<sup>rd</sup> Floor of Block B erected on L.R. 2/713 (original LR No. 2/708).
  3. At the point of the application, the suit property had been transferred to the 2<sup>nd</sup> respondent, Amina Mohamed. The 2<sup>nd</sup> respondent had bought the property following its sale in a public auction. Upon the transfer, the 2<sup>nd</sup> respondent had sought vacant possession. She had asked the applicant to vacate the suit property.
  4. The background of this dispute is that the applicant approached the 1<sup>st</sup> respondent for loan facilities. Following the request, the 1<sup>st</sup> respondent advanced loan facilities amounting to KShs.14,294,634. As security for the facilities, a charge dated 9<sup>th</sup> May 2018 and a further charge dated 7<sup>th</sup> June 2019 were created over the suit property. The charges were created to secure the payment of the principal amount, interests, costs and any charges attendant to the facilities until full payment. It was not disputed that by the time the applicant approached the superior court for a temporary injunction, the loan facilities had not been paid and the 1<sup>st</sup> respondent had realised the security to recover the monies due to it.
  5. The applicant's complaint before the superior court was that he had on 5<sup>th</sup> September 2023 received a letter from the 2<sup>nd</sup> respondent informing him that she was the new owner of the suit property following its purchase in a public auction and that she wanted vacant possession. The applicant had on 20<sup>th</sup> December 2022 received a letter from M/s Garam Investments Auctioneers on behalf of the 1<sup>st</sup> respondent giving him 45 days to redeem the suit property. He had written to the 1<sup>st</sup> respondent protesting the notice, and seeking evidence of valuation and also a detailed loan statement. It does appear the loan statement was sent which he had problems with. He was also informed of the public auction. According to him, the bank had not carried out a valuation before the sale and the sale and transfer were tainted with illegality and ought to be set aside. He complained of, amongst other things, that he was not served with statutory notices.
  6. The 1<sup>st</sup> respondent opposed the application before the superior court on the basis that the applicant was served with the statutory notices, there was valuation for stamp duty purposes, and there was proper public auction following redemption notice. The 2<sup>nd</sup> respondent's case was that, following an advertisement, she proceeded to the public auction after she did due diligence, and she bought the property which she got transferred to herself after payment of stamp duty.
  7. The learned Judge heard the application which she dismissed with costs after she found that the applicant had failed to service the loan; had been served with the requisite statutory notices and the bank had realised its security by having the said property sold in a public auction after a valuation had been done.



8. This application is premised on the notice of appeal dated 19<sup>th</sup> September 2024. In the supporting affidavit it is contended that the applicant has an arguable appeal because the learned Judge failed to notice that the 1<sup>st</sup> respondent failed to serve him with the statutory notices; that the 2<sup>nd</sup> respondent failed to pay 10% deposit thus making the auction irregular; and that the transfer of the suit premises to the 2<sup>nd</sup> respondent was irregular and fraudulent owing to falsified and forged KRA stamp duty documents. On the nugatory aspect, it was pleaded that if a temporary injunction is not issued by this Court, the 2<sup>nd</sup> respondent would evict the applicant from the said property. That would irredeemably affect him.
9. According to the respondents, the applicant had not demonstrated an arguable appeal as he had conceded that he defaulted in the repayment of the loan facility; the trial court had properly found that all statutory notices had been served; and there was a properly conducted public auction in which the 2<sup>nd</sup> respondent had bought the suit property. It was further argued that the applicant had not availed any evidence to the trial court of falsified or forged stamp duty and KCB bank deposit slips; that the allegations of forgery carry a criminal element yet to be determined by the trial court; and that it is established principle that the 1<sup>st</sup> respondent cannot be restrained from exercising its statutory power of sale of the suit premises. As a result, it was contended, the intended appeal would not be rendered nugatory as the only remedy available to the applicant was damages.
10. Learned counsel Mr. Osumba represented the applicant; learned counsel Mr. Kipkoech represented the 1<sup>st</sup> respondent while learned counsel Mr Ochieng held brief for Mr. Saad for the 2<sup>nd</sup> respondent. Each had filed written submissions on which he wholly relied.
11. We have considered the application and the grounds on which it is based, the draft memorandum of appeal, the responses, and the written submissions by learned counsel. We are well aware of this Court's jurisdiction under Rule 5(2)(b) of this Court's Rules. The jurisdiction is discretionary. An applicant has to show that his appeal or intended appeal is arguable, and that unless the injunction is granted, the appeal or intended appeal, if successful, may be rendered nugatory. (See *Ishmael Kagunyi Thande vs. Housing Finance of Kenya Limited* [2007] eKLR.
12. When dealing with the question whether or not the appeal has an arguable ground, we should at this stage desist from making definitive or final findings of either fact or law. Such findings should be left to the bench that will ultimately hear and determine the appeal. (See *Stanley Kangethe Kinyanjui vs. Tony Keter & 5 Others* [2013] eKLR.)
13. In considering this application, we bear in mind that the superior court was dealing with the exercise of discretion to grant or not to grant a temporary injunction. This is an equitable remedy intended to address an injustice. The applicant was not saying that he took a loan of Kshs.14,294,63 from the 1<sup>st</sup> respondent and paid it to the full but the 1<sup>st</sup> respondent still went ahead and sold his property which had secured the loan. He did not tell the trial court how much of the loan he had serviced. In those circumstances, was he the one wronged or he was the one who had wronged the 1<sup>st</sup> respondent? Was he entitled to an equitable remedy of temporary injunction? Can he say to this Court that there was an improper exercise of discretion by the trial court when it denied an injunction?
14. It was submitted on behalf of the 1<sup>st</sup> respondent that the applicant's proprietary rights in the suit property were extinguished at the fall of the hammer and therefore he should render vacant possession



to the 2<sup>nd</sup> respondent. Reference was made to the decision of this Court in Nancy Kahoya Amadiva vs. Expert Credit Limited & Anor [2015] eKLR, in which it was observed that;

“Property passes to the purchaser and the mortgagor loses his equity of redemption upon execution of a valid contract of sale....”

15. At this stage of interlocutory injunction, the trial court was not required to make conclusive findings on contested facts and law but only to weigh the relative strength of the parties' cases. (See *Mbuthia vs. Jimba Credit Corporation* [1988] KLR 1). From the ruling, the court weighed the case of each side before making a decision.
16. On the question whether or not there was fraud or illegality as far as stamp duty and its payment were concerned, we consider the provisions of section 99(4) of The *Land Act*, 2012 which are that a person prejudiced by unauthorised, improper or irregular power of sale shall have a remedy in damages against the person exercising that power. (See *Andrew M. Wanjohi vs. Equity Building Society & Another* [2006] eKLR).
17. Lastly, on whether the applicant's appeal will be rendered nugatory if the notice of motion is not determined in his favour, we recall what this Court said in *Reliance Bank Limited vs. Norlake Investment Limited* [2002] 1 EA 227:

“Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed or restrained if allowed to happen will be reversible, or if it is not reversible whether damages will reasonably compensate the party aggrieved.”

18. It follows that, if we don't grant the sought injunction and the applicant ultimately wins on appeal, the value of the suit property can be ascertained and any loss suffered would be recoverable in damages.
19. The result is that, we find no merit in the notice of motion, which we dismiss with costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

