



**East African Cables PLC v Equity Bank (Kenya) Limited (Civil Application
E650 of 2024) [2025] KECA 901 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 901 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E650 OF 2024
J MOHAMMED, F TUIYOTT & P NYAMWEYA, JJA
MAY 23, 2025**

BETWEEN

EAST AFRICAN CABLES PLC APPLICANT

AND

EQUITY BANK (KENYA) LIMITED RESPONDENT

(RULING (Being an application for injunction under Rule 5(2)(b) of the Court of Appeal Rules pending the filing, hearing and determination of an appeal from the Ruling of the High Court of Kenya at Nairobi (J. W. Mong'are, J.) delivered on 11th November 2024 in HC Comm. Civil Suit No. E505 of 2023)

RULING

1. On 11th November 2024, the High Court (J. W. Mong'are, J.), in Milimani Commercial & Tax division Civil Suit No. 505 of 2023 dismissed an application by East African Cables PLC (the applicant) seeking to injunct Equity Bank (Kenya) Ltd (the respondent or Bank) from exercising its statutory right to sell four properties LR. No. 2X9/4XX5, LR. No. 2X9/8XX6, LR 2X9/6XX2/1 and LR. No. 2X9/6XX2/2 (the suit properties) over a supposed default of repayment of facilities granted by the Bank to the applicant.
2. Dissatisfied with that decision, the applicant intends to appeal against it and has filed a notice of appeal dated 13th November 2024. In the meantime, the applicant is before us with a notice of motion dated 27th November 2024 seeking:
 - (b) THAT pending the filing, hearing and determination of the Applicant's intended Appeal against the Ruling of the Hon. Lady Justice J.W.W. Mong'are delivered on 11th November 2024 in Milimani HC Comm Civil Suit No. E505 of 2023; East African Cables PLC –vs- Equity Bank (Kenya) Limited, an order of injunction be and is hereby issued restraining the respondent, its agents, servants, assigns or any other person whatsoever from advertising for



sale, selling, entering into, accessing, alienating, transferring, interfering with and/or in any manner whatsoever altering or dealing with the applicant's properties known as L.R NO. 2X9/4XX5, L.R NO. 2X9/8XX6, L.R NO. 2X9/6XX2/1 and L.R NO. 2X9/6XX2/2 ("the suit properties") or otherwise give effect of the three

- (3) Statutory Notices dated 3rd July 2023 respectively.
3. In an affidavit sworn on 27th November 2024 in support of the motion, Mr. Paul Muigai, the Managing Director of the applicant, sets out the grounds that the applicant will take up in the intended appeal and contends that the intended appeal has good prospects of success. We return to this shortly.
 4. We are also told that if stay is not granted, then the intended appeal will be rendered nugatory as the Bank, its servants and/or agents will advertise for sale, sell, enter into, access, alienate, transfer, interfere and/or in some other manner alter or deal with the suit properties.
 5. It is common ground that the Bank served three (3) statutory notices dated 13th November 2024 demanding the entire debt.
 6. In a sum the Bank's response is that; the applicant has expressly admitted it is indebted to the Bank and has been working towards liquidating the outstanding; amount which stood at Kshs.2,201,395,011.92 as at 5th December 2024; the appeal is not arguable; should the appeal succeed, then the appropriate remedy is in damages as provided under section 99(4) of The *Land Act* 2012; and the respondent is a tier 1 Bank which can meet any award of damages that may be made against it if the appeal is successful. The response is in an affidavit sworn on 6th December 2024 by Kariuki King'ori, the Manager Legal Services of the Bank.
 7. We have read the application, the response, submissions of the parties and, in addition, considered the highlights of those submissions made by learned counsel Mr. Nyachoti representing the applicant and learned Senior counsel Mr. Kiragu Kimani appearing for the Bank.
 8. The applicant invokes the Court's Rule 5(2)(b) jurisdiction seeking an injunctive order. So as to deserve grant of the order, the applicant must demonstrate that it has an arguable appeal and that the appeal will be rendered nugatory if the injunction is not granted. Both conditions must be met.
 9. An arguable appeal is one that raises at least a single bona fide issue that deserves this Court's consideration at a hearing of the main appeal (See *National Bank of Kenya Limited & another v Geoffrey Wahome Muotia* [2016] KECA 608 (KLR)). As to what is nugatory this Court in *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR stated:

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- “ix) The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling. *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227 at page 232.
- x. Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.
- x. Where it is alleged by the applicant that an appeal will be rendered nugatory on account of the respondent's alleged impecunity, the onus shifts to the latter to rebut by evidence the claim. *International Laboratory for Research on Animal Diseases v Kinyua*, [1990] KLR 403.



10. Although the Bank vehemently argues that the intended appeal is without merit, the threshold to be reached by the applicant at this stage is low. The applicant simply has to demonstrate that even one single issue is not frivolous and is deserving of further consideration. The issue may eventually be found to be without merit but at this interlocutory stage, an in-depth analysis is not only unnecessary but also undesirable as any definitive conclusions may embarrass the Court that will hear the intended appeal.
11. There is a contention by the applicant that there are interim orders of injunction over the same debt in Milimani HCOMM No. E277 of 2023 East African Cables PLC vs Equity Bank Kenya Limited, George Weru and Muniu Thoiti which bind the Bank. In the impugned ruling the learned judge held that those orders do not single out the properties for protection or preservation. On our part, whether or not there is an interplay between this dispute and Milimani HCOMM No. E277 of 2023 East African Cables PLC vs Equity Bank Kenya Limited, George Weru and Muniu Thoiti and whether the orders issued therein are binding on the Bank in respect to the exercise of the statutory power of sale is one that deserves further interrogation by the Court that will hear the intended appeal. In a word even on just that one issue, the appeal is arguable.
12. The second limb is the more difficult for the applicant to surmount. While the parties, not unexpectedly, take different positions as to whether the entire debt has been paid by the applicant, there subsists legal charges over the suit properties which have not been discharged. The worst that can happen to the applicant is for those properties to be sold and it to be found, eventually, that the exercise of the statutory power of sale was improper. Yet, such a sale would not render the intended suit nugatory because of the provisions of section 99(4) of the *Land Act* cited to us by counsel for the Bank. This provides:

“ A person prejudiced by an unauthorised, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.”
13. That is the complete answer to any person who offers his or her property as security in exchange of a Bank facility and pleads that the lender is acting improperly. It must be in the contemplation of a chargor that the chargee could exercise the power of sale in an unauthorised, improper or irregular manner but the only remedy available for such infraction is a relief in damages. The ability of the Bank, a tier 1 Bank, to pay the damages is not doubted and there can be no reason to hold it back from exercising its statutory power of sale even in circumstances where the debt is contested.
14. Ultimately, we find that the notice of motion dated 27th November 2024 is without merit and hereby dismiss it with costs. The interim orders granted earlier are hereby discharged.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2025.

JAMILA MOHAMMED

JUDGE OF APPEAL

F. TUIYOTT

JUDGE OF APPEAL

P. NYAMWEYA

JUDGE OF APPEAL

