



**Zyke Limited v I&M Bank Limited & another (Environment & Land Case E288 of 2024) [2024] KEELC 6686 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6686 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E288 OF 2024**

**MD MWANGI, J  
JULY 31, 2024**

**BETWEEN**

**ZYKE LIMITED ..... PLAINTIFF**

**AND**

**I&M BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ANTIQUA AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Background**

1. The Plaintiff/Applicant approached this court by way of a certificate of urgency seeking orders of temporary injunction to restrain the Defendants/Respondents from entering and taking possession or selling the suit properties namely L.R. No. 20727/109 & Nairobi Block 141/536 in Mwiki, within the Nairobi City, pending the inter partes hearing of the Notice of Motion dated 12<sup>th</sup> July, 2024. The court on 16<sup>th</sup> July, 2024 while certifying the application urgent directed the Plaintiff/Applicant to serve the application for inter partes hearing on 30<sup>th</sup> July, 2024.
2. In her submissions before the court, Ms. Simani, Advocate for the Plaintiff/Applicant informed the court that she had served the Defendants/Respondents on 16<sup>th</sup> July, 2024 via email and also physically. In spite of being served with the application and the order, the Defendants did not file any response to the Plaintiff's application dated 12<sup>th</sup> July, 2024. She therefore prayed that the application be allowed as prayed.

**Determination**

3. The Plaintiff's application is brought pursuant to the provisions of Sections 1, 1A, and 3A of the *Civil Procedure Act*, Order 40 rule 1 of the Civil Procedure Rules, 2010 and Articles 48 and 50 of *the Constitution* of Kenya. The Plaintiff prays for an order of temporary injunction restraining the



- Defendants/Respondents from entering, taking possession or custody and or selling the suit property, pending the hearing and determination of the suit.
4. The application is premised on the grounds on the face of it and the supporting affidavit of Paul Maina Ndemi.
  5. The Plaintiff asserts that the Defendant/Respondent intends to sell the suit properties below the market value in exercise of its statutory power of sale. The Plaintiff alleges that after learning of the Defendants/Respondents' intentions, it moved to deposit the deficit of the loan, and is desirous of regularizing its accounts with the Defendant/Respondent. It is however apprehensive that the Defendant/Respondent will proceed to dispose of its properties unless the court issues an order of temporary injunction to restrain the intended sale. The Plaintiff accuses the Defendant/Respondent of acting in bad faith.
  6. The application is not opposed. I am however concerned with the mode of service on the Defendants. According to the Affidavit of Service filed and deposed by one Elizabeth Akinyi Ochieng, all that was served upon the 1<sup>st</sup> Defendant (only) was a hearing notice. The same was served via email addresses Lydia.ogot@imbank.co.ke, legal.litigation@imbank.co.ke and amuchina@imbank.co.ke.
  7. The deponent does not state in the affidavit how she got the email addresses. How then is the court supposed to know that they are the right email addresses of the Defendants/Respondents?
  8. The purported service was contrary to the directions of the court issued on 16<sup>th</sup> July, 2024. The court directed service of the application alongside the pleadings and summons to enter appearance in accordance with the provisions of order 5 of the Civil Procedure Rules.
  9. Though the Plaintiff's Advocate, Ms. Simani submitted that there was both physical service and service by email upon the Defendants, the Affidavit of Service filed does not demonstrate any physical service upon the Defendants/Respondents.
  10. The service was improper. I direct the Plaintiff/Applicant to serve the application physically upon the 2<sup>nd</sup> Defendants/Respondents as directed on 6<sup>th</sup> July, 2024 in the next 3 days.
  11. In the meantime, and for purposes of preserving the suit properties in the interim period, the court will issue an order of temporary injunction pending the inter partes hearing of the Plaintiff's application dated 12<sup>th</sup> July, 2024 barring the Defendants/Respondents from entering, taking possession, and or selling the suit Properties L.R. No. 20727/109 and Nairobi Block 141/56 in Mwiki, Nairobi.
  12. The court will issue a date for inter partes hearing on a priority basis.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2024**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Simani for the Plaintiff/Applicant

N/A by the Defendants/Respondents

Court Assistant: Yvette

**M.D. MWANGI**



**JUDGE**

