



REPUBLIC OF KENYA



**Miyogo v Osano & another (Commercial Case E001 of 2025)
[2025] KEHC 653 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
COMMERCIAL CASE E001 OF 2025
PN GICHOHI, J
JANUARY 30, 2025**

BETWEEN

JEPHTER MARINGO MIYOGO PLAINTIFF

AND

STELLAH KWAMBOKA OSANO DEFENDANT

AND

RAFIKI MICROFINANCE BANK RESPONDENT

RULING

1. The Plaintiff/Applicant has sued the Defendants /Respondents herein vide a plaint dated 11/11/2024 seeking the following orders:-
2. He simultaneously filed a Notice of Motion on even date under certificate of urgency seeking the following injunctive orders:-
 1. That service of this application and summons to enter appearance be dispensed with at the first instance and for reasons to be recorded the matter be certified as urgent and be heard ex-parte.
 2. That a temporary injunction do issue restraining the Defendants whether by themselves, their employees, servants, agents or otherwise howsoever from advertising for sale, selling or dealing in any other way whatsoever in that property known as Njoro/Ngata block 1/3816 pending the hearing and determination of this application inter partes.
 3. That a temporary injunction do issue restraining the Defendants whether by themselves, their employees, servants, agents or otherwise howsoever from advertising for sale, selling or dealing in any other way whatsoever in that property known as Njoro/Ngata block 1/3816 pending the hearing and determination of this suit.



4. That costs of this application be borne by the Defendants.
3. The grounds are on the face of the application supported by an Affidavit sworn by Applicant on 11/11/2024.
4. That application was dealt with on 6/12/2024 at the first instance and certified not urgent. It was directed that the Respondents be served for directions on 18/1/2025 but was inadvertent as the date fell on a Sunday. It was therefore dealt with on 20/1/2025.
5. Only the Applicant and the 2nd Respondent attended. Mr. Waweru for the 2nd Respondent intimated that he had filed a Replying Affidavit. Mr. Matemo for the Applicant intimated that he had been served and wished to file a supplementary Affidavit.
6. Through prompting by this Court, parties agreed to and this case was transferred on the same day to ELC Court Nakuru on account that the issues raised encroached issues within the jurisdiction of the ELC Court.
7. However, vide an Order issued and published on 27/1/2025 by Justice (Dr.) M.A. Odeny of ELC , this file was transferred back to this Court on the grounds that matter involves charges and therefore fall within the jurisdiction of this Court pursuant to Court of Appeal decision in Co-operative Bank Of Kenya Limited v Kangethe Njuguna & 5 others [2017] eKLR.
8. By the time this matter was listed before this Court on 29/1/2025, the Applicant had filed another Certificate of Urgency renewing his quest for injunctive Order in terms of prayer 2 of the Application dated 11/11/2024.
9. Due to the urgency of the matter and upon this Court realising the 2nd Respondent's Replying Affidavit had not been uploaded in the system, the matter was listed for hearing today and that the Respondents be served.
10. This Court directed to be availed a physical copy of the same by either party. A copy has been availed by Counsel for the Applicant. The Respondents are absent.
11. After hearing counsel for the Applicant and considering the averments and annexures to the Replying Affidavit by the Respondent together with the submissions by Counsel for the Applicant, it is evident that the sale of the suit property is scheduled for today.
12. The material herein has satisfied this Court of the urgency herein and that a prima facie case has been made to warrant granting of prayer 2 of the said application but in the following terms:-
 1. A temporary injunction be and is hereby issued restraining the Defendants whether by themselves, their employees, servants, agents from proceeding with the auction scheduled today in respect of property known as Njoro/Ngata block 1/3816 pending full hearing and determination of this application.
 2. The cost to abide outcome of the application.
 3. Mention for further directions on 19th February, 2025.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF JANUARY , 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:



Mr Ratemo Plaintiff/Applicant

N/A Defendants/Applicants

Ruto- Court Assistant

