



Gami Properties Limited v Estate of Satpal Singh Jowhal; Gilt Edge Development Limited & another (Interested Parties) (Commercial Case E531 of 2024) [2025] KEHC 5297 (KLR) (Commercial and Tax) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E531 OF 2024
JWW MONG'ARE, J
APRIL 25, 2025**

BETWEEN

GAMI PROPERTIES LIMITED PLAINTIFF

AND

ESTATE OF SATPAL SINGH JOWHAL DEFENDANT

AND

GILT EDGE DEVELOPMENT LIMITED INTERESTED PARTY

I&M BANK LIMITED INTERESTED PARTY

RULING

1. By an application filed before this court by a Certificate of Urgency brought under Order 39 Rule 5 & 7, Order 51 Rule 1 of the [Civil Procedure Rules](#) and Section 1A, 1B, 3A, of the [Civil Procedure Act](#) by the Plaintiff seeking the following orders:-
 1. Spent
 2. Spent
 3. That pending the hearing of this Application and suit herein, summons do issue to the Defendant, to appear before the Honourable Court and show cause why it should not furnish security and/or an undertaking for the decree that may be passed against the Defendant herein.
 4. That pending the hearing of this Application and suit herein, summons do issue to the 1st interested party, to appear before the Honourable Court and show cause why it should not furnish security and/or an undertaking to hand over 40% of the total proceeds as would



be received out of the intended sale of Land known as LR. No. 209/15286 Gilt edged Developments Ltd to the 2nd interested party or any other third parties for the partial settlement on the principal sum of Kshs. 217,550,831/=.

5. That pending the hearing of this Application and suit herein, a warrant of arrest do issue against the executrix Surrinder Kaur Jowhal show cause why she should not furnish security and provide an undertaking to hand over 40% of the total proceeds as would be received out of the intended sale of Land known as LR. No. 209/15286-Gilt edged Developments Ltd to the 2nd interested party or any other third parties for partial settlement on the principal sum of Kshs.217,550,831/= being the principal sum and the interest and their appearance in court.
 6. That pending the hearing of the main suit herein an order do issue directing both interested parties whether by themselves, agents, servants, employees, advocates or any other person or entity claiming proprietary rights or any interests whatsoever through the interested parties to deposit the total purchase price from the sale of LR. No. 209/15286-Gilt edged Developments Ltd with the Applicant's advocates to hold on stakeholder basis and to release the sum to the successful party upon the conclusion of the suit herein.
 7. That in the alternative and without prejudice to the above, pending the hearing of the application and suit temporary injunction restraining the 1st interested party and the Defendant whether by their servants or agents or as employees or advocates or otherwise howsoever from appropriating, distributing, disposing or utilizing or in any manner interfering with the 40% share interest in the would be purchase price of land known as LR. No. 209/15286-Gilt edged Developments Ltd.
 8. Any other order that the court deems fit to grant in the interest of justice.
 9. Costs of this application be provided for.
2. The application is supported on the grounds set out therein and the supporting affidavit of Bharat Patel. It is opposed and the Defendant filed grounds of opposition dated 24th January 2025 and a replying affidavit sworn on the same date by Surrinder Kaur Jowhal.
 3. Both parties have filed written submissions which I have carefully considered. The Applicant's submissions are dated 21st January 2025 while the Defendant filed written submissions dated 24th January 2025. No responses or written submissions were filed by the two interested parties. It is therefore safe to assume the two do not wish to participate in the present application at this point.

Analysis and Determination

4. Having carefully considered the pleadings and the affidavit filed in support thereto and the grounds of opposition and response by the Defendant together with the rival submissions, I note that the issue that this court is called to determine is whether a Mareva Injunction to preserve 40% of the anticipated sale proceeds of LR. No. 209/15286-Gilt edged Developments Ltd pending the hearing and disposal of this suit should be granted.
5. Order 39 Rule 5 of the [Civil Procedure Rules](#) sets out the guidelines to be considered by a court before granting a Mareva injunction. It provides as follows:-

“Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the Defendant, with intend to obstruct or delay the execution of any decree that may be passed against him: -



- a. Is about to dispose of the whole or any part of his property; or
- b. Is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the Defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.”

6. Halsbury laws of England 3rd edition Vol. 3(1) page 329-331 defines a Mareva injunction as follows:-

“A Mareva injunction is an order of the court restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with assets, located within that jurisdiction and in more limited circumstances from dealing with assets located outside the jurisdiction. The foundation of the court’s jurisdiction is the need to prevent judgments of the court from being rendered ineffective, whether by the removal of the Defendant’s assets from the jurisdiction or by disposition.”

7. The above guidelines were extrapolated in Beta Health International Limited v Grace Mumbi Githaiga & 2 others (2016) eKLR where the court stated as follows:-

“The grant of a freezing injunction is governed by principles quite distinct from those laid down for ordinary interim injunctions...Before granting a freezing injunction the court will usually require to be satisfied that:-

- i. The claimant has a “good arguable case” based on a preexisting cause of action;
- ii. The claim is one over which the court has jurisdiction;
- iii. The Defendant appears to have assets within the jurisdiction;
- iv. There is a real risk that those assets will be removed from the jurisdiction or otherwise dissipated if the injunction is not granted at all; and
- v. There is a balance of convenience in favour of granting the injunction;
- vi. The court can also order disclosure of documents or the administration of requests for further information to assist the claimant in ascertaining the location of the Defendant’s assets.”

8. I have carefully considered the arguments put forth by the Applicant and the response thereto. I note that the present application does not seek to stop a sale of the suit property herein being LR No. 209/15286 – Gilt Edged Developments Ltd but seeks to preserve 40% of the sale proceeds from the said property to which the applicant lays a claim. The applicant argues that they have a claim for Kshs. 217,550,831/= against the Defendant and hence that is the basis against which they seek security for.

9. As stated above and more so in the Beta Health International Limited case(supra) for a court to grant a Mareva injunction it must be demonstrated, among other grounds, that there is real danger of the assets sought to be preserved being dissipated or taken out of the jurisdiction of the court. I have looked at the annexures to the supporting affidavit sworn by Bharat Patel in support of this application. While the said annexures include what appears to be conversations around an intended sale of the suit property, there is nothing presented before this court to demonstrate that the property is in the process of being



sold. The court would want to see some form of a sale agreement or some form of payment of a deposit by a purchaser to presume that the same is being disposed off.

10. I further note that the suit upon which this application is premised is yet to be heard and determined and as properly argued by the Defendant, the applicant has not demonstrated that indeed he has a judgment or a decree that is ripe for execution and that the preservation of the 40% of the purported sale proceeds are what he requires to satisfy he said decree. I am therefore in agreement with the Defendant that the Applicant has not demonstrated that there is sufficient cause to grant a preservation order in form of a Mareva injunction. It is not possible for a court to preserve that which does not exist.
11. I find therefore the application before this court is not merited. I dismiss the same with costs to the Defendants. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF APRIL 2025

J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Clapton Evans for the Plaintiff.

Ms. Gakure holding brief for Mr. Wairoto for the Defendant.

Amos - Court Assistant

