



REPUBLIC OF KENYA



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**AO Basid Limited v Diamond Trust Bank & another (Civil Suit E328 of 2022)
[2025] KEHC 7513 (KLR) (Commercial and Tax) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E328 OF 2022
FG MUGAMBI, J
MAY 30, 2025**

BETWEEN

AO BASID LIMITED APPLICANT

AND

DIAMOND TRUST BANK 1ST RESPONDENT

DALALI TRADERS 2ND RESPONDENT

RULING

1. This Ruling determines the application dated 27th March 2024. It seeks injunctive and stay orders pending the hearing and determination of the application. It also seeks to have the Ruling of 6th February 2024 reviewed and set aside and for consolidation of HCCC No. E328 of 2022 (the present suit) with HCCS No. E447 of 2022 (E447/2022).
2. The application arises from this court's dismissal of a previous application filed by the applicant in the present suit, which sought injunctive relief. That application was dismissed through a ruling dated 6th February 2024. Following the dismissal, the Bank proceeded to advertise the properties for sale by public auction.
3. The applicant contends that in the meantime, this court issued orders in E447 of 2022 preserving the guarantor's properties having been satisfied that the facilities in question had been fully repaid. The applicant argues that the subject matter in E447/2022 is identical to that of the present suit. Consequently, the applicant seeks consolidation of the two files and to have the Ruling of 6th February 2024 stayed to allow for a determination of whether the full amount due to the Bank has, in fact, been settled.



4. The application is opposed by the 1st respondent (the Bank), through a replying affidavit sworn on 15th July 2024. The Bank contends that the application fails to meet the threshold for injunctive relief, does not satisfy the requirements for a review of this court's ruling, and lacks justification for the consolidation of the two suits, as they arise from distinct transactions involving separate loan facilities and securities.

Analysis and Determination

5. I have carefully considered the arguments advanced by both parties, their affidavits and evidence as well as their submissions. The issues for determination are whether the two suits ought to be consolidated, whether the applicant is entitled to the injunctive and review reliefs sought.
6. Regarding consolidation of the two mentioned suits, this court has broad discretion to order consolidation where certain criteria are met. The key guiding principles were laid out in *Nyati Security Guards & Services Ltd V Municipal Council of Mombasa*, [2000] eKLR, which held that consolidation is appropriate:
 - i. where some common question of law or fact arises in both or all the suits;
 - ii. where the rights or reliefs claimed in the suits are in respect of the same transaction or series of transactions, or
 - iii. for any other reason where it is desirable to consolidate for convenience or to avoid multiplicity of proceedings.
7. Section 107 of the *Evidence Act* places the burden of proof on any party asserting a fact. In this case, it was incumbent upon the applicant to demonstrate that the request for consolidation of the two suits met the requisite threshold. However, no evidence was provided to support this claim.
8. The plaint dated 9th November 2022 filed in E447/2022 and produced by the applicant, indicates that the suit was instituted by one Hafsa Kassim Sheikh, who is not a party to the present suit. While the defendants in that matter are the same as in this suit, the claim concerns LR No. 3734/135. The charge dated 16th February 2009 annexed to the Bank's replying affidavit and the plaint confirms that the facilities for which the suit property was given as security is an aggregate amount of Kshs. 157,690,000/=.
9. I have equally independently reviewed the plaint in the present suit, dated 25th August 2022, which pertains to two different properties. The Charges dated 23rd March 2017 in respect of L.R. No 209/4546 and L.R. 7240/50 both confirm that the applicant herein is the chargor. These properties were used to secure various facilities including an overdraft facility of Kshs. 40,000,000/=, term loan of Kshs. 50,000,000/= and establishment of another term loan of Kshs. 190,000,000/=.
10. In the absence of any evidence to the contrary, I find that even though the two suits relate to a singular borrower, they are distinct transactions by virtue of the separate facilities, and securities. Consequently, consolidating them would serve no useful purpose and would only complicate the resolution of disputes that are, in my view, clearly distinguishable and whose outcomes could differ depending on the circumstances in each case. For these reasons, the prayer for leave to consolidate the two suits is declined.
11. The applicant also seeks injunctive relief. The principles governing the grant of such an injunction are well-settled, in the landmark case of *Giella V Cassman Brown & Co Ltd*, [1973] EA 358. The Court laid down a three-part test that an applicant must satisfy: first, establish a prima facie case with a



probability of success; second, demonstrate that they stand to suffer irreparable injury which cannot be adequately compensated by an award of damages if the injunction is refused; and third, if the court is in doubt on the foregoing, it should decide the application on a balance of convenience. These conditions are to be applied as sequential hurdles meaning that each must be met before proceeding to the next

12. As to whether the applicant succeeds in the first hurdle, I have already pronounced myself on the fact that the present suit and E447/2022 involve distinct and separate transactions. Given this, it is evident that the Ruling dated 6th February 2024 pertains exclusively to the suit property in E447/2022 and the transaction therein, and not to the present suit. The record also confirms that, with regard to the present suit, this court has already ruled on the matter and dismissed a prior application for injunctive relief.
13. Since the applicant has failed to establish a prima facie case, it follows that the application for injunctive relief must fail without the necessity of any further enquiry.
14. The final issue for determination is the applicant's prayer for a review of the Ruling of 6th February 2024. The power of a court to review its own orders or judgments is a creature of statute, governed by Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
15. Under these provisions, a party may apply for review of a decree or order in three main circumstances:
 - i. upon discovery of new and important evidence which, after exercising due diligence, was not within the applicant's knowledge or could not be produced at the time the order was made;
 - ii. on account of some mistake or error apparent on the face of the record; or
 - iii. for any other sufficient reason.
16. The applicant has not demonstrated the existence of any of the grounds required to justify a review of the ruling. Consequently, the prayer for review is also unsuccessful.

Disposition

17. Accordingly, the application dated 27th March 2024 is devoid of merit. It is dismissed with costs to the Bank. The interim orders are hereby vacated.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 30TH DAY OF MAY 2025.

F. MUGAMBI

JUDGE

