



**Reata Properties Ltd v Chase Bank (Kenya) Ltd (In Liquidation)
& another (Commercial Miscellaneous Application E579 of 2024)
[2025] KEHC 12278 (KLR) (Commercial and Tax) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E579 OF 2024**

**H NAMISI, J
AUGUST 29, 2025**

BETWEEN

REATA PROPERTIES LTD APPLICANT

AND

CHASE BANK (KENYA) LTD (IN LIQUIDATION) 1ST RESPONDENT

KENYA DEPOSIT INSURANCE CORPORATION 2ND RESPONDENT

RULING

1. The Applicant has instituted this Miscellaneous Application with Notice of Motion dated 18 July 2024 seeking the following orders:
 - i. Spent
 - ii. A temporary injunction do issue restraining the Respondents or their agents from selling by auction or any other way, or from taking entry into, or leasing, or disposing off or in any manner whatsoever interfering with Title No. Nairobi/Block 91/258 (hereinafter “the suit property”), pending the hearing and determination of this Application;
 - iii. A mandatory injunction do issue compelling the Respondents or their agents to surrender the title documents to Title No. Nairobi/Block 91/258 to the Applicant;
 - iv. A mandatory injunction do issue compelling the Respondents to cause the execution of a Discharge of Charge of Title No. Nairobi/Block 91/258;
 - v. The costs of this Application be borne by the Respondents.
2. The Application is premised on the following grounds:



- i. The Applicant herein is the registered proprietor of property Title No. Nairobi/Block 91/258;
 - ii. The suit property was charged some time in March 2016 by the 1st Respondent for KShs 150 million immediately after which the 1st Respondent less than a month later was put under receivership and later liquidation before the loan documents could be executed and the loan disbursed;
 - iii. The 2nd Respondent was then appointed Receiver Manager and later the Liquidation Manager of the 1st Respondent;
 - iv. The Applicant does not have any debt outstanding to the 1st Respondent against the suit property;
 - v. Despite the loan not materializing, the 1st and 2nd Respondents have failed to surrender the title documents to the Applicant and to execute a Discharge of Charge in spite of numerous requests by the Applicant;
 - vi. The Applicant has other facilities with the Respondents secured by other properties that are currently outstanding and there has been ongoing negotiation between the Applicant and the Respondents on settlement of the same;
 - vii. Through a letter dated 4 July 2024 to the Applicant, the Respondents have while declining the Applicant's settlement proposal, threatened to exercise statutory power of sale over all properties charged by them to recover the outstanding amounts in the outstanding facilities;
 - viii. The Respondents have previously purportedly issued the Applicant with statutory notices, threatening to sell the suit property to settle other outstanding facilities with the 1st Respondent, facilities that are adequately secured by other properties;
 - ix. The Respondents have recently issued the Applicant with a statutory notice dated 8 July 2024 that does not include the suit property as part of the security for the outstanding facilities. This acknowledgment corroborates the fact that the Respondents are aware the suit property did not secure any loan disbursed;
 - x. The Respondents' refusal to discharge the suit property continues to fetter the Applicant's right to use and dispose its property as enshrined under Article 40 of *The Constitution*;
 - xi. Unless this Honourable Court intervenes and urgently grants the orders sought herein, the Applicant's rights to ownership and use of property continue to be fettered in total disregard of the law;
 - xii. It is fair and in the interest of justice that this Application is heard as a matter of urgency and the orders sought herein granted.
3. In response thereto, the Respondents filed a Replying Affidavit and Notice of Preliminary Objection dated 26 July 2024. The Preliminary Objection is on the ground that the Applicant's suit offends the express provisions of section 56(2) of the *Kenya Deposit Insurance Act* and is fatally defective for commencing against the 1st Respondent without seeking the Court's sanction.
 4. Parties canvassed the Application by way of written submissions.
 5. Before delving into the merits of the Application, I wish to address one pertinent issue; whether the Application has met the conditions set to warrant the orders sought.



6. From the prayers in the Application, it is clear that the Applicant seeks mandatory injunctive orders. The question then arises whether a miscellaneous application is the proper way of initiating a suit as the instant one, seeking substantive and final orders.
7. The law that governs applications for injunction is premised under Order 40 Rule 1 of the Civil Procedure Rules which provides as follows:
 1. Where in any suit it is proved by affidavit or otherwise-
 - a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 - b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, The court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
8. The above provisions point to the fact that any application for injunction ought to be anchored in a suit. Unfortunately, this is not the case herein. An application for injunction can only be issued where there is a substantive suit in place otherwise the injunction will be in vain and it cannot stand in law. This was the position held by the court in the case of Cresta Investments Limited –vs- Gulf African Bank Limited & Another [2020] eKLR which held:

“Moreover, an application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”
9. In view of the foregoing, the Notice of Motion dated 18 July 2024 has no legs upon which to stand and must face the inevitable fate of striking out. The Applicant is at liberty to file a proper suit to secure his rights under the law.
10. The Notice of Motion dated 18 May 2024 is hereby struck out with costs to the Respondents. The orders issued on 21 July 2024 are hereby vacated.

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicant: Ms. Lung'ania

Respondents: N/A

Court Assistant: Lucy Mwangi

