



REPUBLIC OF KENYA



**Patel & 2 others v Diamond Trust Bank Limited & another (Commercial Case E494 of 2024)
[2025] KEHC 12466 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E494 OF 2024
JWW MONG'ARE, J
SEPTEMBER 1, 2025**

BETWEEN

**ASHITE CHANDRAKANT PATEL 1ST PLAINTIFF
GRISHMA ASHITE PATEL 2ND PLAINTIFF
BIO CORN PRODUCTS (EPZ) LIMITED 3RD PLAINTIFF**

AND

**DIAMOND TRUST BANK LIMITED 1ST DEFENDANT
STEPHEN KARANJA KANGETHE T/A DALALI TRADERS
AUCTIONEERS 2ND DEFENDANT**

RULING

1. On 16th August 2024, the Plaintiff moved this Honourable Court by a Notice of Motion Application filed under Order 40 Rules 1, 2, 4 & 10 of the Civil Procedure Rules and Sections 1A, B, 3A & 63 of the Civil Procedure Act and Sections 96(2), 97, 99, 102 & 104 of the Land Act, and Articles 10(2), (a), (b), & (c), 19(1), 23, 27(1), 47(1), 48, 50(1) & 238 of the Constitution of Kenya seeking the following orders:-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to grant an Order of Temporary Injunction restraining the Defendant/Respondents either by herself, nominated agents, servants and/or anyone claiming and/ or acting under the said Defendants/Respondents, from exercising the Statutory Power of Sale over and in respect of Eldoret Municipality / Block 10/34 and L.R. No. 209/3477 Dar es Salaam Road, Industrial Area, Nairobi (hereinafter referred to as the suit



property) and in particular, advertising for Sale, selling vide Public Auction and /or Private treaty, Disposing of, transferring, leasing, alienating, clogging and/or in any other manner interfering with the Plaintiffs/Applicants Titles, rights and/or interest therein, whatsoever and/or howsoever, pending the hearing and determination of the instant suit.

- d. Costs of this Application be borne by the Defendants/Respondents
 - e. Such further and/or other orders be made as the court may deem fit and expedient.
2. The Application is premised on the grounds set out on its face and the supporting affidavit Chrisma Ashite Patel sworn on 14th August 2024. When the matter was first considered by the Court at the ex-parte stage, the court granted a temporary injunction restraining the Defendants from proceeding with the intended sale by public auction. In response and upon being served with the Application, the Respondents filed a Notice of Motion application on 21st August 2024 under Order 2 Rule 15(2)(b) (c) & (d), Order 40 Rule 7, Order 4 Rule 1, Order 51 Rule 1 & 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 7, & 8 of the Civil procedure Act seeking the following reliefs:-
- a. Spent
 - b. That pending the hearing and determination of this application, this Honourable Court be pleased to discharge the ex-parte orders of temporary injunction issued on 20th August 2024 restraining the interested parties(sic) from exercising their statutory power of Sale by public auction over property known as Land Reference Number 209/3477- Dar Es Salaam Road, Nairobi measuring 0.0604 Ha or 0.1492484 acre situated in Industrial Area Nairobi(hereinafter referred to as the “Nairobi property”)and Eldoret Municipality Block 10/34 (hereinafter referred to as the “Eldoret Property”).
 - c. That the Plaintiff’s suit be struck out for being scandalous, vexatious, frivolous and an abuse of the Court process.
 - d. That costs of this application and the suit be borne by the Plaintiff.
3. The Respondents’ application was supported by the grounds set out on its face and the supporting affidavit of Faith Ndonga sworn on 21st August 2024. Alongside the said application, the Respondents filed a replying affidavit also sworn on 21st August 2024 responding to the Application of 16th August by the Applicants. The Plaintiffs, similarly and in response to the Defendants application of 21st August 2024 filed a replying affidavit sworn by Grishma Ashite Patel on 26th September 2024. Both parties filed their respective written submissions to the two applications.
4. The court while preparing to write its ruling on both applications noted that on 28th November 2024, there was filed in the CTS a Notice of Change of Advocates for the Plaintiff replacing the firm of M/S Moraa & Kianda Advocates for the Plaintiff with M/S Stella K. Odhiambo & Associates Advocates in their place. The court further noted that subsequently, the new firm of Advocates on 15th January 2025, filed a Notice of Withdrawal of the entire suit. The court observed that in the subsequent dates when this matter was mentioned before the court, this notice was not brought to the attention of the court.
5. Be that as it may, the Plaintiff having filed the said notice to withdraw its suit, the court finds that it is therefore not necessary to proceed and consider the motions by the two parties will proceed to adopt the said notice dated 15th January 2025 as an order of this court and mark this matter as spent. The court notes that the Defendants had expended a lot of time and energy in defending both the application and will award costs of the suit and the application to the Defendants and assess the said costs at Kshs.100,000/-. This court file will now be closed accordingly. It is so ordered.



DATED SIGNED AND DELIVERED virtually at NAIROBI this 1ST DAY OF SEPTEMBER 2025

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J.W.W. MONGARE

JUDGE

In the Presence of

1. Mr. Kianda Nchaga for the 1st -3rd Plaintiffs.
2. Ms. Kavata holding brief for Mr. Shah for the Defendants.
3. Amos- Court Assistant

