



**Kaburia v Co-operative Bank of Kenya Ltd (Civil Suit E066 of 2024)
[2024] KEHC 16895 (KLR) (27 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 16895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E066 OF 2024
F WANGARI, J
FEBRUARY 27, 2024**

BETWEEN

DAVID KARIMA KABURIA PLAINTIFF

AND

CO-OPERATIVE BANK OF KENYA LTD DEFENDANT

RULING

1. This ruling relates to a Notice of Motion dated 05/02/2025 which sought for the orders of temporary injunction to restrain the Defendant, servants or agents from selling by way of auction, the property known as L.R MN/1/5467 (Original No. 5192/14) (C.R No. 18818) pending hearing and determination of this suit.
2. The Plaintiff/ Applicant also sought for the review of this court's orders dated 14/11/2024 where temporary order of injunction was granted against the Defendant restraining the bank from selling by way of auction the above mention property. The injunctive orders were subject to the Applicant depositing Kshs. 3,000,000 within next 45 days of the ruling, in default, the Defendant was to proceed with the sale.
3. From the application subject to this ruling, it is evident that the Applicant did not comply with the orders of the court prompting the Defendant to advertise afresh for sale of the property in issue. This led to the filing of the present application by the Applicant seeking for similar orders as sought in the application dated 10/09/2024 save for the review orders.
4. The application was opposed. The Respondents filed a Replying Affidavit dated 13/02/2025 deponed by the Respondent's Legal Manager. It was deponed that despite the court accommodating the Applicant, the Applicant was unable to comply with the court's orders.



5. The Applicant first paid Kshs. 500,000, a day after the given period. A further Kshs. 2,500,000 was paid on 29/02/2025, 30 days out of time. The delay in compliance with the court's orders was not merited hence the application should be dismissed with costs.
6. The application was disposed of by way of written submissions. The parties complied by filing submissions together with various authorities in support of the parties' rival positions.

Analysis and Determination

7. I have considered the application, responses, submissions together with the authorities relied upon by the parties as well as the law. It is a fact that the Applicant did not comply with the conditions set for the temporary injunction orders, hence the Defendant used the default clause by advertising the property in issue for sale.
8. The Applicant claims that the delay in complying with the court orders is as a result of the High Court vacation from December to January hence it was impossible to comply with the court's orders. Further, the Applicant deponed that the Defendant based the intended auction on erroneous valuation report as there was gross under valuation of the property, hence if the auction would proceed, the Applicant would suffer irreparable damage.
9. Upon consideration of the pleadings filed by each party, there is no new issue that has been raised by the Applicant that would beseech this court from departing from the orders earlier issued on 14/11/2025. The reasons for delay in complying with the court's orders have got no merits.
10. It has not been explained how the Christmas and New Year Holidays on one hand, and High Court vacation on the other hand, barred the Applicant from complying with the court orders. I find no sufficient reasons have been given to cause this court to review previous orders in the matter.
11. I do acknowledge the fact that Kshs. 3,500,000 was deposited by the Applicant towards the loan arrears. the Defendant states that as 13/02/2025, the Applicant still owed Kshs. 41, 836,672.93 and interests and penalties continues to accrue. It is noted that the Kshs. 2,500,000 was deposited after the Applicant received the message notifying him of the sale of his property by way of public auction. Despite the deposit of the said money, the Applicant is still in arrears of the loan advanced.
12. Nevertheless, it must be ensured that justice is done to both parties herein. The forced sale value currently given by the Defendant is Kshs. 37,500,000. In year 2017 at the time of advancing the loan to the Applicant, the Defendant had given the forced sale value of the property at Kshs. 45,000,000.
13. Almost 8 years later, it cannot be that the property has depreciated in value. I find dishonesty on the part of the Defendant. I tend to agree with the valuation report given by the Applicant, giving the current forced sale value at Kshs. 49,500,000. It is expected that the report would tilt in favour of the Applicant. In balancing the interests of both parties, I hereby direct that the forced sale value should not be below Kshs. 48,000,000.
14. Based on the above discourse, I make the following orders: -
 - a. The application dated 05/02/2024 has no merits and the same is hereby dismissed.
 - b. Considering the interests of the Applicant, it is hereby ordered that the forced sale value of the property should not be below Kshs. 48,000,000
 - c. Each party to bear its own costs

Orders accordingly.



DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF FEBRUARY, 2024.

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F. WANGARI

JUDGE

In the presence of;

Mutubia Advocate for the Plaintiff/Applicant

Kongere Advocate for the Defendant/ Respondent

Brian, Court Assistant

