



REPUBLIC OF KENYA



KENYA LAW
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**Kinyua t/a Ngurumo Destiny Care Academy v Ed Partners Africa Limited
(Petition E161 of 2024) [2025] KEHC 5969 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E161 OF 2024**

HM NYAGA, J

MAY 2, 2025

BETWEEN

JUDY KINYUA T/A NGURUMO DESTINY CARE ACADEMY APPLICANT

AND

ED PARTNERS AFRICA LIMITED RESPONDENT

RULING

1. The matter for determination is the application dated 19th September, 2024, which seeks the following order:-
 1. Spent
 2. Spent
 3. That the Honourable court be pleased to grant an order of temporary injunction to restraining the respondent whether by themselves, their agents/servants and/or their auctioneers from repossessing, advertising, selling or interfering in any way with her ownership and possession of motor vehicle registration number KBQ 553U pending the hearing and determination of the appeal.
 4. That the costs of the application be in the cause.
2. The application is proposed by the grounds set out on the face of it and is supported by the affidavit of Judy Kinyua, sworn o even date.
3. In a nutshell, the appellant case is that she runs a school by the name Ngurumo Destiny Care Academy. That she took a loan from the respondent and motor vehicle Registration Number KBQ 553U was secured by joint registration of the said vehicle. That due to financial difficulties. She delayed in repayment of the loan. That she moved the lower court vide CMCC. NO. E053 of 2024, seeking an



order of status quo. That in its ruling delivered on 10th September, 2024, the trial court dismissed her application. That she later preferred an appeal against the said ruling.

4. The applicant thus prays for the orders sought pending hearing and determination of the appeal herein. That there will be great prejudice to the school if the bus which is used to ferry students is repossessed. That she is willing to settle her financial responsibilities.
5. In response, the respondent filed a replying affidavit sworn by Janet Kimunyi IT manager collections and recoveries Unit. It is deponed that the applicant was advanced a loan of Ksh. 1,450,000 and subsequently, the loan fell into arrears. That the applicant does not dispute being in arrears of he said loan and has not made any single payment since she filed the suit in the lower court.
6. It is further deponed that the dismissal of file application by the lower court is a negative order that cannot be stayed. That the appeal herein has no chance of success since the applicant has admitted to be in arrears of the loan facility. That no substantial loss will be suffered by the applicant, who has come to court with unclean hands.
8. The respondent further avers that it will suffer prejudice if the orders are granted as the outstanding loan remains unpaid and continues to accrue interests.

Analysis and Determination.

9. There is no dispute that the applicant took out the loan facility with the respondent. She has admitted that she fell into arrears, for a period that she describes as few months when the respondent moved to realize the security. She moved the lower court, seeking orders of injunction. The lower court, found and correctly, that she did not meet the threshold for the grant of an injunction. It dismissed her application. She then moved this court with the present application which is not seeking a stay of the orders of the lower court, but is a fresh application for injunction, pending the determination of the appeal.
10. The applicant must then establish her case within the parameters set out *in Giella Versu Cassman Brown (1973) (EA 356*, where it was held as follows;
 1. The applicant must show a prima facie case with a probability of success.
 2. The applicant must prove that denial of the injunction would lead to irreparable damage that cannot be compensated through damages.
 3. If points 1 and 2 are satisfied, the court must then use its discretion to determine whether it's just and convenient to grant the injunction.

Has the applicant established a prima facie case?

11. A prima facie case was described in Nrao Limited Versus First American Bank of Kenya as follows;
 1. The power of a court in an application for an interlocutory injunction was discretionary.
 2. The Court of Appeal may only interfere with the exercise of a court's judicial discretion if satisfied:
 1. The judge misdirected himself on law; or
 2. that he misapprehended the facts; or
 3. that he took account of considerations of which he should not have taken account; or



4. that he failed to take account of consideration of which he should have taken account;
or
 5. that his decision, albeit a discretionary one, was plainly wrong.
12. Looking at the material before the court, it is evident that the applicant is still in arrears of the loan. All she tells the court is that she is willing to meet her financial obligations, but has not availed any evidence of payment.
 13. In essence, the application is asking the court to look at the same evidence that she presented before the trial court and which found that she had not established a prima facie case.
 14. Looking at the application, I am also of the view that no prima facie case has been established by the applicant.
 15. The appeal, in my view, is frivolous and has no chance of success, since she admitted that she was indeed indebted to the respondent.
 16. Whoever the applicant has a right of appeal, that appeal ought not to be used to evade her primary obligation, which was to repay the loan she obtained from the respondent.
 17. Courts, are not Sororities to shelter loan defaulters who are out to steal a march over their creditor.
 18. Having conducted this matter, I find that the application cannot succeed and it is dismissed with costs.
 19. As regards, the appeal itself, I find that the same is frivolous, for reasons adduced, and it is summarily rejected under Section 793 of the *Civil Procedure Act*.
 20. Costs to the respondent.

DATED, SIGNED & DELIVERED AT MERU THIS 2ND DAY OF MAY, 2025.

H.M. NYAGA

JUDGE

