



REPUBLIC OF KENYA



**Ngoru & another v Letshego Kenya Limited (Civil Case E048 of 2025)
[2025] KEHC 9283 (KLR) (Commercial and Tax) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E048 OF 2025
F GIKONYO, J
JUNE 23, 2025**

BETWEEN

PETER GICHANE NGORU 1ST APPLICANT

CAFÉ' HELLENA LIMITED 2ND APPLICANT

AND

LETSHEGO KENYA LIMITED RESPONDENT

RULING

1. Before me is the plaintiffs' notice of motion dated 4th February 2025, expressed to be brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules, seeking: -
 1. A temporary injunction restraining the respondent, its agents, employees or servants from advertising for sale by public auction or private treaty, selling, entering, taking possession of or in any way interfering with current ownership of Land Reference Number Nairobi/Block 105/10619 ("the Suit property") pending hearing and determination of this suit.
 2. That the OCS Ruai Police Station with the help of the DCI area chief Ruai and assistant chief be ordered to enforce the orders of this court and keep peace pending the hearing and determination of this suit.
 3. That costs be paid by the respondent with interest.

Grounds

2. The application is based on the grounds on its face and the supporting affidavit sworn by the 1st applicant. The grounds are that:-



1. The 1st applicant is the registered owner of the suit property. As at 2022, the value of the suit property was Kshs. 21,500,000/-.
2. In 2023, the respondent advanced the 2nd applicant, a loan of Kshs. 11,000,000/- secured by the suit property.
3. The respondent served the applicants with the statutory notice dated 8th May 2024, seven months later on 30th December 2024, contrary to the provisions of the Land Act.
4. The notice was served through Whatsapp, against the mode of service provided in the offer letter.
5. Upon expiry of the 90 day notice, the respondent will exercise its statutory power of sale by instructing an auctioneer to recover the debt.
6. The respondent did not serve the statutory notice upon the 1st applicant's wife.
7. The 2nd applicant is a private limited company which operates a hotel business in town, adjacent to Nairobi City Hall, where the 'Gen-Z' protests caused a lot of damages.
8. The 1st applicant, the director of the 2nd applicant, has been paying the debt and without fail until the 'Gen-Z' protests erupted.
9. The hotel business is currently closed due to hard economic times which has occasioned losses of hundreds of thousands. Despite the losses, the 1st applicant has been making efforts to pay the debts as per the agreement.
10. The applicants have approached the respondent to have the loan restructured and give them more time to pay the outstanding loan amount. However, the respondent turned down the proposal.
11. The closure of the business has left many employees under 30 years old unemployed. Hence, the debt ought to be restructured and the time period varied so that the applicants can continue servicing the loan.
12. The sale of the suit property would amount to a loss that would not be adequately compensated. It is in the interest of justice and fairness that the application is allowed.
13. The 1st applicant has information from insiders, information that he believes to be true, that there is a plot hatched to have the prime land sold through a private treaty between the agents and friends' of the financial institution. He intimated that this might have been the sole reason for his proposals rejection.

No response

3. The applicants filed an affidavit of service sworn by a court process server, Samuel Mwalimu Musyoka, confirming that he served the present application upon the respondent at its offices on 25th February 2025.
4. However, the respondent did not file a response to the application.

Analysis and Determination

5. Whilst keeping within the view the broader constitutional principles of justice, the court is guided by the principles for the granting interlocutory injunction, to wit: the applicants has established;



- a) a prima facie case with probability of success;
 - b) irreparable injury that cannot be compensated by costs; and
 - c) in case of doubt, that the balance of convenience tilts in granting the injunction. *Giella v Cassman Brown & Co Ltd*, (1973 E. A. 38
6. A prima facie case is one where, on material presented, a court will conclude that the applicants' rights have been infringed. It is more than an arguable case. *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR
 7. The evaluation for prima facie case, is not a mini trial or examination of the merits of the case so closely. *Nguruman Ltd v Jan Bonde Nielsen & 2 Others*, [2014] eKLR
 8. The core ground raised by the applicants in this matter is that the statutory notice of sale is a nullity since the respondent failed to follow the laid down process under the *Land Act*.
 9. The applicants complained that the respondent served the statutory notice dated 8th May 2024 upon them seven months after its generation, on 30th December 2024, and through Whatsapp. They argued that this was contrary to the *Land Act* and contrary to the letter of offer which does not list Whatsapp as an acceptable mode of service. The applicants further lamented that the respondent failed to serve the statutory notice of sale upon the 1st applicant's wife who was also the guarantor.
 10. I note that in the plaint dated 20th January 2025, the applicants indicate that the statutory notice dated 8th May 2024 was served on 9th July 2024, two months after its generation.
 11. However, the copy of the notice uploaded by the applicants is not complete, to enable the court to ascertain the dates.
 12. Nevertheless, Clause 14 of the Letter of Offer states: -

“ 14. Notices

Any notice or demand for payment by Letshego Kenya Limited under this Letter shall be deemed to have been properly served on the Borrower/ Guarantors delivered by hand or sent by registered post, telex or facsimile at the addresses replied to the Letshego Kenya Limited in writing by the Borrower or at the registered offices or any of the principal places of business of the Borrower.”

13. Section 96 of the *Land Act* provides:-

“ 96. Chargee's power of sale

- (1) Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.
- (2) Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the



charged land until at least forty days have elapsed from the date of the service of that notice to sell.

- (3) A copy of the notice to sell served in accordance with subsection (2) shall be served on—
- (a) the Commission, if the charged land is public land;
 - (b) the holder of the land out of which the lease has been granted, if the charged land is a lease;
 - (c) a spouse of the chargor who had given the consent;
 - (d) any lessee and sublessee of the charged land or of any buildings on the charged land;
 - (e) any person who is a co-owner with the chargor;
 - (f) any other chargee of money secured by a charge on the charged land of whom the chargee proposing to exercise the power of sale has actual notice;
 - (g) any guarantor of the money advanced under the charge;
 - (h) any other person known to have a right to enter on and use the land or the natural resources in, on, or under the charged land by affixing a notice at the property; and
 - (i) any other persons as may be prescribed by regulations, and shall be posted in a prominent place at or as near as may be to the charged land.”

14. In law, the respondent is required to serve the 90-day statutory notice of sale upon the applicants, the 1st applicant’s spouse and the guarantor. The onus of proving the notice was duly served lies with the charge. However, there is no evidence that the respondent complied with Section 96 of the *Land Act*. Therefore, I find that the applicants have established a prima facie case with a probability of success.
15. The applicants argued that they stand to suffer irreparable harm if the injunction is not granted and the charged property is sold.
16. Some courts have held that disputes over land in Kenya evoke a lot of emotion, and except in very clear cases, it cannot be said that damages will adequately compensate a party for its loss. *Muiruri v Bank of Baroda (Kenya) LTD* [2000] KLR 183
17. Other courts have held that once a property is offered as security for financial advances, it immediately becomes liable to be liquidated as a commodity in the property market the tender memories and deep emotions associated with it notwithstanding. *Anita Chelegat v Fredrick Kumah* Civil Appeal No. 300 of 2018
18. In this case, the respondent did not file any response to the effect that it has the capability of compensating the applicants for the loss of the property if they are successful in the suit.



19. This is a fit case for determination on the basis of the last test; in the event of doubt, the court moves to consider where the balance of convenience lies. In this respect, the court looks at the lower risk of injustice. *Films Rover International Ltd v Cannon Film Sales Ltd* 1986 3 All ER 772.
20. The applicants asserted that the 2nd applicant carries on a hotel business that was hampered after the ‘Gen-Z’ protests, hence the need to restructure the loan repayments and the timelines. The also asserted that the closure of the business has led to the unemployment of its employees who are youths below 30 years of age.
21. Based on these assertions, I am of the considered view that the balance of convenience tilts in favour of the applicants.

Disposal

22. The upshot is that the application dated 4th February 2025 is allowed, in the following terms: -
 1. That pending hearing and determination of this suit, a temporary injunction is granted restraining the respondent, its agents, employees or servants from advertising for sale by public auction or private treaty, selling, entering, taking possession of or in any way interfering with current ownership of Land Reference Number Nairobi/Block 105/10619 (“the Suit property”) in so far as proper statutory notices have not been given as required in law.
 2. Since the applicants do not dispute being indebted to the respondent, they are directed to continue making monthly deposits of Kshs. 419,660.10/- towards offsetting of the outstanding loan together with any other accrued interest or penalties.
 3. In default of clause (2) above, the respondent shall be at liberty to exercise its statutory power of sale over the suit property upon issuance of all the requisite statutory notices.
 4. No orders as to costs as there was no response to the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 23RD DAY OF JUNE, 2025.

F. GIKONYO M

JUDGE

In the presence of: -

CA - Kinyua

