



Fahari Valuers Limited v Absa Bank Kenya PLC & another (Commercial Case E006 of 2025) [2025] KEHC 12688 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL CASE E006 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025**

BETWEEN

FAHARI VALUERS LIMITED PLAINTIFF

AND

ABSA BANK KENYA PLC 1ST DEFENDANT

**STEPHEN KARANJA KANGE'THE T/A DALALI TRADERS
AUCTIONEERS 2ND DEFENDANT**

RULING

1. The application dated 3rd March 2025 seeks for orders of an injunction restraining the defendants, their servants and/or agents from advertising for sale, offering for sale, selling, transferring and/or dealing in any way whatsoever with land parcel number Thika Municipality Block 11/844 pending the hearing and determination of the suit.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 29th April 2025.

The Applicant's Case.

3. The applicant avers that it has had a running business relationship with the 1st respondent as a result of which the 1st respondent advanced to it a loan facility of the sum of Kshs. 8,000,000/- secured through a legal charge against its property Thika Municipality Block 11/844 in July 2020. The loan was to be repaid in 60 months at a monthly instalment of Kshs. 225,000/- at an annual rate of 13.5%.
4. The applicant avers that it has been servicing the loan diligently save for few occasions when the loan went into default as a result of difficult business environment which it explained to the 1st respondent. The applicant asserts that it has paid a cumulative sum of Kshs. 5 million between July 2020 to January 2025.



5. The applicant argues that despite its continued payments, the 1st respondent has declined to issue an accurate loan statement of accounts capturing the said repayments while continuing to charge interest at a prohibitive rate calculated daily and charged monthly by way of compound interest. Further, the 1st respondent maliciously declined to apply the moratorium issued by the government in April 2021, to cushion businesses against the effects of covid 19 and continued to apply interest nonetheless.
6. The applicant states that the 1st respondent has on various occasions illegally increased the interest rate on its loan account and currently the outstanding arrears of the loan have been escalating at astronomical levels as the outstanding arrears as at 14th January 2025 stood at Kshs. 12,304,195.20/-. The applicant further states that the 1st respondent has shrouded the transactions attendant to the said loan account in mystery, withheld information and suppressed accountability and duty of care to it and is closing all avenues to enable it redeem its property.
7. The applicant avers that the 1st respondent issued instructions to the 2nd respondent who issued a notification of sale and a 45 days redemption notice dated 14th January 2025 and notification of sale dated 16th January 2025 declaring the intention to sell the property on 25th March 2025 through public auction. The applicant argues that the scheduled sale by public auction is premature actuated with malice to sell the applicant's property irregularly when the loan is performing and has not fallen into arrears.
8. The applicant argues that the current estimated value of the charged property is in excess of Kshs. 30 million while the 1st respondent has instructed the 2nd respondent to sell the subject property to a third party purchaser at an under value price of Kshs. 18 million and forced sale value of Kshs. 13,500,000/- which is a depreciation from the valuation carried out on the property on 28th February 2020 where the market value was placed at Kshs. 23,000,000/- and the forced sale value at Kshs. 17,300,000/-.
9. The applicant avers that the 1st respondent owes a duty of care to transact matters of the said title and loan facility within the confines of business propriety, economic justice, prudence, fairness, maximum returns and legality. The applicant further avers that if the sale proceeds as scheduled, the applicant stands to lose legal economic rights over the said property.
10. The applicant states that no prejudice shall be occasioned upon the respondents if the orders sought are allowed because the charged property is valued at over Kshs. 30 million and there is no possibility that the loan balance will outstrip the value of security since it is meeting its part of the contract by making the monthly instalments when they fall due.

The 1st Respondent's Case

11. The 1st respondent states that by a charge dated 17th March 2020 between the applicant as the borrower and the bank as the charge over Thika Municipality Block II/844, the bank granted the applicant financial facilities for an aggregate principal amount of Kshs. 9 million. It was an express term of the charge instrument that the charge over the suit property would secure payments to the bank of such sums as shall be owed to it by the applicant on the current account or other accounts and in default, the bank would exercise its rights under the Land Act to sell the property and realise the sums due.
12. The 1st respondent states that it issued the applicant with the three months statutory notice on 8th July 2024 indicating that the loan was in arrears of Kshs. 11,596,152.65/-. On 23rd October 2024, the applicant was issued with the forty days statutory notice to realise the outstanding amount of Kshs. 11,861,914.05/-. The 1st respondent instructed the 2nd respondent on 13th January 2025 to serve the 45 days redemption notice to the applicant which was served on 14th January 2025. The 2nd respondent then proceeded with the advertisement of the suit property on 10th March 2025.



13. The 1st respondent states that the loan advanced to the applicant remained consistently in default, save for infrequent and irregular payments, without any communication from the applicant.
14. The 1st respondent avers that the interest charged was based on the letter of offer and the charge instrument which was voluntarily executed by the applicant upon receipt of independent legal advice. Furthermore, the 1st respondent states that it owes the applicant a fiduciary duty of care which it dutifully and reverentially lived to that duty of care to the applicant in respect of the loan transaction.
15. The 1st respondent states that it instructed Acumen Valuers Ltd to value the suit property which it did and made a report dated 3rd December 2024. Thus, the 1st respondent states that it takes serious issue with the baseless allegations of fraudulent intent, which are totally unfounded. Furthermore, the referenced valuation report captures with unmatched detail, all aspects that would encompass the current value of the property. Therefore the allegations by the applicant are not supported by any evidence and remain largely presumptuous.
16. The 1st respondent states that the applicant is tainted with unfathomable bad faith, mala fides and remains a deliberate plan schemingly devised by the applicant to deny them of its statutory right of sale that has since accrued given the persistent default of the applicant, which is expressly admitted.
17. The 1st respondent argues that the instant application does not raise any prima facie case but effectively seeks to unfairly disentitle it from exercising its statutory power of sale which right has since accrued given the prevailing circumstances that the applicant has continually defaulted in the loan repayment and continues to be in arrears. Furthermore, the applicant has approached the court with unclean and tainted hands by failing to disclose the material facts regarding its default and the account.
18. The 1st respondent states that it has carried out its security realisation rights under the law and in any event no prejudice will be occasioned to the applicant as it is well aware of the implications of the charge and that any loss therefrom may be compensated by way of monetary damages.
19. The applicant filed a Further Affidavit dated 23rd June 2025 and states that the valuation by Acumen Valuers Ltd is deliberately designed to grossly undervalue the suit property in order to sell the suit property for a price significantly below the market value and forced sale value of the suit property. The applicant states that it instructed Acre Point Realtors Ltd to conduct a valuation of the suit property to wit the said valuation report valued the suit property at a market value of Kshs. 26,000,000/- and a forced sale value of Kshs. 19,500,000/-. Thus, the applicant states that it is apprehensive that there is a concerted effort to grossly undervalue the suit property in an attempt to deprive it of the true market value of the suit property.
20. Parties put in written submissions.

The Applicant's Submissions.

21. The applicant submits that it disputes the valuation of the suit property subject to the exercise of the 1st respondent's statutory power of sale. The applicant relies on Section 97 of the *Land Act* and the cases of Koileken ole Kipolonka Orumoi vs Mellech Engineering & Construction Limited & 2 Others [2015] eKLR and Palmy Company Limited vs Consolidated Bank of Kenya Limited [2014] eKLR and submits that the purpose of valuation is to obtain the best price reasonably attainable at the time of the sale thus protecting the right of the chargor and preventing an unscrupulous chargee from selling the charged property at a price that is peppercorn. The applicant submits that the valuation by NW Realite Limited dated 28th February 2020 the suit property was valued at Kshs. 23 million as the market value and Kshs. 17,300,000/- as the forced sale value yet the valuation report filed by the 1st respondent



indicates a drop in the market value of the property to Kshs. 18million without any justification for the alleged depreciation in value of the suit property. The applicant argues that the said circumstances are indicative of a concerted attempt at grossly undervaluing the suit property in order to dispose the same at a throw away price and defeat any possibility of refund of the surplus from the proceeds of sale to it.

22. The applicant further disputes the computation of the interest and penalties payable to the 1st respondent which have reached astronomical figures despite it having paid Kshs. 5 million of the principal loan of Kshs. 8 million advanced. The applicant argues that the 1st respondent by failing to furnish it with the loan schedule upon request intends on concealing irregular interest and penalties. Thus, the applicant argues that it has established a prima facie case.
23. The applicant submits that the balance of convenience leans towards granting the orders sought. Relying on the case of Koileken Ole Kipolonka Orumoi vs Mellech Engineering & Construction Limited & 2 Others [2015] eKLR, the applicant urges the court to broaden its approach and consider other relevant facts in order to ensure that the overriding objectives of justice are achieved.

The 1st Respondent's Submissions

24. The 1st respondent relies on the cases of Giella vs Cassman Brown (1973) EA 358 and Wiseborn Industries (K) Limited vs Fortune Sacco Society Limited (2019) eKLR and submits that the applicant has failed to demonstrate more than an arguable case with a high probability of success as it is in loan arrears. Furthermore, the 1st respondent submits that it has demonstrated that the applicant started defaulting on the repayment plan long before they completely stopped servicing the outstanding amount. Thus, the applicant has failed to establish a prima facie case.
25. Relying on the cases of Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR and Ann Wangari Thuku & Another vs Kenya Commercial Bank Limited (2024) eKLR, the 1st respondent argues that the value of charged property is quantifiable and therefore damages would suffice as compensation. The 1st respondent further relies on the case of Elijah Kipng'eno Bii vs Kenya Commercial Bank Limited (2011) eKLR and submits that a charged property is a commodity of sale as the chargor will have known from the outset that in the case of default in repayment, the property will be sold.
26. The 1st respondent refers to the cases of Tengeri Osoro vs Standard Chartered Bank (K) Limited & Another (2022) eKLR and Ann Wangari Thuku & Another vs Kenya Commercial Bank Limited (supra) and submits that an interlocutory injunction being an equity remedy demands that any chargor may only approach the court with clean hands and the applicant in the instant case has approached the court with unclean hands for it is submerged in arrears and therefore not worthy of any equitable remedy.
27. The 1st respondent argues that it is a financial institution that can easily compensate the applicant for any loss occasioned hence no prejudice shall be suffered. To support its contentions, the 1st respondent relies on the case of Obama Enterprises Limited & 2 Others vs Kenya Women Microfinance Bank Limited (Civil Case E315 of 2021) [2021] KEHC 351 (KLR) (Commercial and Tax) (16 December 2021) (Ruling).
28. Relying on the case of Bryan Chebii Kipkoech vs Barnabas Tuitoek Bargoria & Another (2019) eKLR, the 1st respondent submits that since the applicant has not proven a prima facie case and that no irreparable harm will be occasioned to it upon sale of the charged property, the court ought not to consider the balance of convenience because essentially no doubts arise as to the first two grounds.



29. The 1st respondent refers to the case of Andrew Muriuki Wanjohi vs Equity Building Society Limited & 2 Others [2006] eKLR and submits that the balance of convenience falls in its favour as it stands to lose if the facility is allowed to continue accruing and there is a possibility that the facility may end up surpassing the value of the charged property hence exposing the bank to insurmountable losses which it may not be able to recover from the applicant.
30. The 1st respondent submits that it is evident from the pleadings that the applicant has defaulted on the loan facility and instead of remedying the situation, the applicant has been making false promises in an attempt to delay it from exercising its statutory power of sale. The applicant admits being in default of the structured repayment plan as agreed with the bank and the applicant has not made any attempt to remedy the bank despite receiving all the statutory notices. Thus the 1st respondent argues that it ought to be allowed to exercise its statutory power of sale pursuant to section 90 of the *Land Act*. To support its contentions, the 1st respondent relies on the cases of Yusuf Abdi Ali Co. Ltd vs Family Bank Limited [2014] eKLR and Beatrice Atieno Onyango vs Housing Finance Company Limited & 3 Others [2020] eKLR.

Issue for determination

31. The main issue for determination is whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction.

The Law

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction

The principles of interlocutory injunction are now well settled. Those principles were set out in *East African Industries vs Trufoods* [1972]EA 420 and *Giella vs Cassman Brown & Co. Ltd* [1973]EA 358. Restating the said principles, Ringera J, (as he then was) in *Airland Tours & Travel Limited vs National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002 set them out as follows:-

- a. A prima facie case with a probability of success at trial;
 - b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;
 - c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;
 - d. The conduct of the applicant meets the approval of the court of equity.
32. Similarly, in *Dr. Simon Waiharo Chege vs Paramount Bank of Kenya Ltd Nairobi (Milimani)* HCCC No. 360 of 2001, Ringera J, (as he then was) held:-

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation, which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show that he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy



for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as pertains to the subject matter of the suit does not meet the approval of the eye of equity.”

A prima facie case with a probability of success at trial

33. What then constitutes a prima facie case? In the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125,

“The principles which guide the court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly, a standard, which is higher than an arguable case.”

34. It is not disputed that applicant took a credit facility with the 1st respondent on 17th March 2020 for an aggregate principal amount of Kshs. 9 million. Further, the applicant does not dispute that it is in arrears of the said loan facility. The applicant’s bone of contention is that the suit property has been grossly undervalued, and that the 1st respondent has declined to issue an accurate loan statement of accounts capturing the repayments made while continuing to charge interest at a prohibitive rate. Notably, the applicant does not dispute that it was served with the requisite statutory notices.
35. Pursuant to Section 97 of the *Land Act*, a chargee owes a duty of care to a chargor to obtain the best price reasonable at the time of selling the charged property. It provides:-
1. A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any charge under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of the sale.



2. A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.
36. The importance of undertaking a forced valuation was explained in the case of *Koileken Ole Kipolonka Orumos vs Mellech Engineering & Construction Limited & 2 Others* (2018) eKLR where Gikonyo J. held that:
- “..the forced sale valuation is not only for purposes of carrying through the public auction or solely for recovering the debt, but reinforces the rights of the charger to have reasonable value for his property. That is why the duty under section 97(2) of the *Land Act* is statutory and obligatory. It is not left to the whims of the charge and its agents especially the auctioneers.”
37. The applicant in the present case argues that the 1st respondent did not discharge its duty under Section 97 of the *Land Act* because it grossly undervalued the suit property at a sum of Kshs. 18 million and forced sale value of Kshs. 13,500,000/- which is a depreciation from the valuation carried out on the property on 28th February 2020 where the market value was placed at Kshs. 23 million and the forced sale value at Kshs. 17,300,000/-.
38. The principles that guide courts in determining whether or not to order an independent valuation have been discussed in the case of *Zum Zum Investments Limited vs Habib Bank Limited* (2014) eKLR where the court held that:-
- It is not sufficient for the applicant to merely claim that the intended selling price is not the best price obtainable at the time by producing a counter valuation report. The applicant must satisfactorily demonstrate why the valuation report that the respondent intends to rely on in disposing of the suit property does not give the best price obtainable at the material time.....The applicant needs to show, for instance, that the respondent’s valuer is not qualified or competent to carry out the valuation, or that the valuation was carried out in consideration of irrelevant factors or that the valuation was done before the time of the intended sale.
39. Similarly in the case of *Palmy Company Limited vs Consolidated Bank of Kenya Limited* [2014] eKLR the court held:-
- The onus of establishing on prima facie basis, that the applicant’s right has been infringed by the respondent by failing to discharge the duty of care under Section 97(1) of the *Land Act* lies on the applicant...The court needs cogent evidence and material in order to say that prima facie, there has been an undervaluation of the suit property which is an infringement of Section 97(2) of the *Land Act* by the respondent as to entitle the court to call for an explanation or rebuttal from the respondent.
40. Guided by the principles set out in the cases above, it is my considered view that the applicant has not offered evidence to show that the valuation done was a complete undervaluation of the suit property. The applicant has not demonstrated that the valuer Acumen Valuers Limited were unqualified. Furthermore, the applicant did not outline any irrelevant factors considered by the valuers in undertaking their valuation. The court further notes that the valuation was done on 3rd December 2024 which was 3 months before the date scheduled for public auction in line with Rule 11(b)(x) of the Auctioneers Rules. Therefore, it is my considered view that the 1st respondent complied with Section 97(2) of the *Land Act*. The applicant only produced a valuation report by Acre Point Realtors Ltd dated 23rd May 2025 indicating the current market value as Kshs. 26 million and forced sale value at Kshs. 19,500,000/-.



41. The applicant has further faulted the 1st respondent for failing to issue it with an accurate loan statement of accounts capturing the repayments and for charging interest at a prohibitive rate. In *Ezekiel Osugo Angwenyi & Another vs National Industrial Credit Bank Limited* [2017] eKLR, the court held:-

In view of the different figures stated above, it was necessary for the defendant to provide an account to the plaintiff...The plaintiffs were entitled to know which entries had been made to their loan accounts, interests applied and applicable penalties. It is thus clear that with no accounts rendered, the sums owed by the plaintiffs' if any, are not known and will never be known. Indeed, this is why the defendant's witness carelessly testified that they were owed in excess of Kshs. 20,000,000. It is therefore true that any amount alleged to be due to the defendant by the plaintiff is a result of guesswork. A court of law cannot determine issues of account based on guesswork, and any bank which fails to keep proper records of account cannot make ascertainable claim against a customer. Banks must keep proper records of account. It is on the basis of such record that a claim for or against a bank can be determined. Since between a bank and a borrower the former is the one obligated to keep a more dependable record and to avail statements of account, a bank, like in this case, which cannot keep and avail accountable record will be disqualified from making any claims against a borrower, and would be hard to discharge any such claims by a borrower.

42. On perusal of the pleadings, the applicant has not shown any evidence that it requested for the bank statements either by email or correspondence. The 1st respondent on the other hand has attached the loan statement to its replying affidavit showing that as at 28th April 2025 the loan had an outstanding amount of Kshs. 12,949,503.30/-.
43. On the issue of the discrepancy of the loan amount due to interest, I have noted that the 1st respondent wrote a demand letter to the applicant on 24th April 2024 informing them that their loan arrears stood at Kshs. 7,043,996. However, the statutory notice sent by the 1st respondent to the applicant on 5th July 2024 shows that the loan stood at Kshs. 11,596,152.65/-. Looking at the loan statement produced by the 1st respondent, the said amounts differ from what was demanded from the applicant. The loan statement shows that as of 20th July 2024, the loan stood at Kshs. 13,092,657.55/-. Thus, if the loan stood at Kshs. 7,043,996/- on 24th April 2024, has not been explained by the applicant how the loan arrears stood at Kshs. 11,596,152.65/- on 5th July 2024, approximately two months later. In the statutory notice sent to the respondent on 5th July, the outstanding loan was indicated as Ksh.11,596,152.65. The loan statement of the same month of July 2024 has the figure of Ksh.13,092,657.55 displaying quite a discrepancy within the same month. The applicant has expressed concern on the applicant's failure to issue the loan statement on her request. If the property was to be sold before the parties settle the issue of the accounts, the applicant is likely to lose on the sale by public auction.
44. This leads me to the conclusion that the applicant has established a prima facie case.

Irreparable Injury

45. The applicant has a duty to establish that in the event that the orders sought are not granted, it is likely to suffer irreparable injury. In the case of *Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd*



& 2 Others [2016]eKLR the court considered Halsbury's Laws of England on what irreparable loss is and stated that:-

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

46. Similarly, in *Maithya vs Housing Finance Co. of Kenya & Another* [2003] 1 EA 133 at 139 where Honourable Nyamu J, stated as follows:-

“Charged properties are intended to acquire or are supposed to have a commercial value otherwise lenders would not accept them as securities. The sentiment of ownership which has been greatly treasured in this country over the years has in many situations given way to commercial considerations. Before lending, many lenders, banks and mortgage houses are increasingly insisting on valuations being done so as to establish forced sale values and market values of the properties to constitute the securities for the borrowings or credit facilities....Loss of the properties by sale is clearly contemplated by the parties even before the security is formalized. For these reasons, I hold that damages would be adequate remedy and it has not been suggested that the respondent cannot pay damages should it become necessary.”

47. Therefore, has the applicant demonstrated that it will suffer irreparable loss unless the injunction is granted, which loss would not be adequately compensated by an award of damages? The applicant argues that the suit property is grossly undervalued and does not reflect the true market price. The 1st respondent submits that once property is charged it becomes a commodity of sale and in any event, any damage that the applicant alleges it shall suffer can be compensated by way of damages.

48. The applicant in the instant case has not shown that the 1st respondent's valuation is incompetent. It is trite law that any loss suffered due on irregular exercise of statutory power by the charge shall be remedied by way of damages. Any undervaluation if any is not a good ground to grant an interlocutory injunction against the chargee. It is further not in doubt that the 1st respondent has the capacity to pay any damages in case of any loss due to undervaluation. It is therefore my considered view that the applicant has not demonstrated any irreparable loss.

Balance of Convenience Test

49. An applicant seeking an injunction must show that the balance of convenience favours the granting of an injunction by demonstrating that the inconvenience to them if the injunction is not granted outweighs the inconvenience to the opposing party, if the injunction is granted, with the ultimate goal of presenting justice between the parties. In essence, if the balance of convenience is in favour of the applicant, the court is more likely to prevent greater potential harm.

50. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is



really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.

51. Considering the principles in the foregoing case and weighing the facts herein, it is my considered opinion that the balance of convenience tilts in favour of the applicant 1st respondent because the inconvenience caused to it will be much greater than that caused to the 1st respondent if the court finds that the loan amount is excessive and unconscionable.

Conclusion

52. I thus opine that the applicant herein has met the threshold as set out in the case of *Giella vs Cassman Brown* and therefore an injunction ought to issue in its favour.
53. I therefore, find that the application dated 3rd March 2025 has merit and is hereby allowed in the following terms:-
- a. That an order of injunction do issue restraining the 1st respondent, their agents or servants from advertising for sale, selling, transferring or dealing in any way whatsoever with L.R. Thika Municipality Block 11/844 pending hearing and determination of this suit.
 - b. That the applicant do deposit Ksh,1,000,000/= in the 1st respondents loan account within 60 days and in default these orders to be vacated.
 - c. That the applicant shall at the expiry of ninety (90) months continue servicing the loan account at the rate of Ksh.500,000/= per month pending hearing and determination of the suit and in default the stay orders to be vacated.
 - d. That the costs of this application to abide in the suit.
54. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

