



**Kimani t/a Farmwise Farm Store v Amica Savings and Credit Limited & another (Civil Appeal E016 of 2024) [2025] KEHC 13048 (KLR) (22 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13048 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E016 OF 2024  
TW OUYA, J  
SEPTEMBER 22, 2025**

**BETWEEN**

**HUMPHREY MBURU KIMANI T/A FARMWISE FARM STORE ..... PLAINTIFF**

**AND**

**AMICA SAVINGS AND CREDIT LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**STAR TRUCK AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 25<sup>th</sup> October 2024, the Applicant herein is sought for ex-parte orders restraining the Defendant Respondents either by themselves or their employees, agents and/or servants from selling, advertising for sale or disposing off to a third-party motor vehicle registration numbers KDH 510D and KCH 368T pending the hearing and determination of this application and suit.
2. The application is pegged upon a civil suit vide plaint dated 25<sup>th</sup> October 2024 by the Plaintiff/Applicant against the Respondents seeking for orders that:
  - a. A declaration be made that the plaintiffs do not owe the Defendant a sum of kshs. 3,430,000.00 or any sum at all.
  - b. A discharge of securities titles No. LOC. 17/Sabasaba/1147 and Euasonyiri/Ilpejeta Block 1/13188.
  - c. Costs of the suit and interest from the date of filing suit.
3. The applicant brought this suit after two of his vehicles were seized by the 2<sup>nd</sup> Defendant/Respondent after an alleged default of a loan facility given by the 1<sup>st</sup> Defendant/Respondent. The plaintiff also sought for the discharge of immovable securities charged by the 1<sup>st</sup> Defendant/Respondent being title numbers LOC. 17/Sabasaba/1147 and Euasonyiri/Ilpejeta Block 1/13188.



4. The Application is hinged on grounds and affidavit of even date sworn by Humphrey Mburu Kimani (Plaintiff/Applicant) to the effect that the actual amount due or owed is not clear, that the vehicles seized are the applicant's only means and tools of trade and transport and that the 1<sup>st</sup> Defendant's act has crippled the Applicant's business. The Applicant also pleads that he continues to incur heavy costs in hiring vehicles for delivering goods to his long-time customers so as to sustain his business. He avers that it is only fair and in the interest of justice to grant the orders prayed for and that the 1<sup>st</sup> Defendant will not suffer any prejudice. The application is supported by an array of documents annexed to the affidavit.
5. In response to the application/suit, the 1st Defendant/ Respondent filed a Notice of Preliminary Objection dated 5<sup>th</sup> November 2024 urging that the plaint dated 25<sup>th</sup> October 2024 be struck out on the grounds that:
  - a. The nature of the plaintiff's cause of action and reliefs sought therein arises from a dispute between the 1st Defendant and its member the plaintiff, a dispute within the meaning of section 76(2) of the *Cooperative Societies Act* and therefore ought to be heard and determined in the first instance by the Cooperative Tribunal.
  - b. That this Honourable court lacks jurisdiction in law to entertain, interrogate and determine the suit as the matters in issue fall within the jurisdiction of the Co-operatives Tribunal by dint of section 76(1) of the *Cooperative Societies Act*.
  - c. That the matter is a nullity and an abuse of the process of court and should be dismissed.The respondent invokes within the preliminary objection, the court decision in *Muthoni v Capital Sacco Limited: Viewline Auctioneers* Meru High Court Commercial Case E001 of 2024 (KEHC) 5863(KLR).
6. It now behoves of this court to determine the applicant's application in view of the preliminary objection raised by the 1<sup>st</sup> Defendant /Respondent.
7. The Application was disposed through written submissions.
8. The Applicant submitted that the preliminary objection raised by the Respondent should not be sustained. He argues that he brought his suit under the *Micro Finance Act* Cap 493 as opposed to the *Cooperative Societies Act* Cap 490 laws of Kenya whose Regulator is SASRA. He also argues that the matter was filed in the high court by dint of article 165(1) of the *Constitution* which grants it unlimited original jurisdiction to hear and determine all suits of a civil nature. That the doctrine of exhaustion does not apply in this context but only in cases where the parties have not moved to court.
9. The applicant invites the court to look at the nature of the matter and the remedies being sought in that the applicant is seeking the discharge of properties charged to the 1<sup>st</sup> Defendant which the Cooperative Tribunal has no jurisdiction as it falls under the *Land Act* No. 6 of 2012 or *Land Registration Act* no. 3 of 2012. That the key arguments by the parties will revolve on whether the Applicant had defaulted, the remedies thereto and whether the 1<sup>st</sup> Defendant can exercise the statutory power of sale and how.
10. He urges the court to dismiss the preliminary objection and to proceed to entertain this matter.
11. The Defendant/ Respondent on the other hand, submits on the issue as to whether the court has jurisdiction to entertain the plaintiff's suit. The Respondent's argument is that the dispute between the plaintiff as a member of the Defendant arising from a facility accorded to the plaintiff by the Defendant is thus between the letter and meaning of section 76(1) (b) as read together with section 76(2) (b) of the *Act*. The respondent points out that the fact of membership of the plaintiff to the 1<sup>st</sup>



Defendant is acknowledged at paragraphs 4 to 6 of the plaint and in the witness statement which fact remains uncontroverted. It is the respondent's argument that the issue in question is predicated upon the default of the plaintiff on the facility accorded to the plaintiff by the Defendant.

12. The Defendant/Respondent invokes the ratio decidendi of Justice Nyarangi in the locus classicus case of *Owners of the Motor vessels Lillian S Vs Caltex Oil (K) ltd* Civil appeal no. 540 of 191389 where the court held that:

‘Jurisdiction is everything. Without is a court has no power to make one more step. Where the Court has no jurisdiction, there would be no basis for a continuation of procedure pending other evidence. A Court of Law shall lay down tools in respect of the matter before it the moment it holds opinion that it is without jurisdiction’

13. He also relies on the provisions of Section 76 of the *Cooperative Societies Act* which he cited verbatim on Disputes:

- (1) Notwithstanding anything contained in any other written law, a dispute touching on the business of a co-operative society shall be referred to the tribunal.
- (2) A dispute referred to in subsection (1) shall include any dispute between a co-operative society and its members or past members.

14. The respondent further relies on the authorities of *Republic v Matbeka Kithome & 4 Others* Mombasa Misc Application No. 664 Of 2010 and *Muthoni V Capital Sacco Limited* (2024) KEHC 5863 (KLR) to buttress his argument that in so far as a dispute is closely related to the business of a Cooperative Society, that dispute must fall within the primary jurisdiction of the Cooperative Tribunal and that the High Court can only hear such a dispute in an appellate capacity. He argues further that section 76 is couched in mandatory terms that jurisdiction lies in the first instance in the Cooperatives Tribunal.

15. I have carefully considered the application and pleadings and annexures thereto together with the parties rival written submissions and all the authorities cited. I find that the issues arising for my determination is whether this court has jurisdiction to entertain this matter.

16. It is notable that the 1<sup>st</sup> Defendant is described in the proceedings as Amica Savings and Credit Limited. A glance at the annexed copy of the plaint describes the 1<sup>st</sup> Defendant as a Microfinance institution involved in the business of savings and credit for its customers in Murang'a County and other places within the republic of Kenya.

17. A copy of a letter dated 16th October by the 1<sup>st</sup> Defendant to the Applicant states inter alia that:

“The Sacco must be notified of the date, venue and time of sale....”

18. In its supporting affidavit sworn on 25<sup>th</sup> October 2025, it is averred that the applicant opened an account with the 1<sup>st</sup> Defendant and has been doing daily banking therein. It is on this account that the applicant was deemed qualified for a loan and an amount of kshs. 28,000,000 advanced to be paid at the rate of kshs.822,000 per month within a period of 48 months. The same was against a security of the investor deposits, title deed and logbook.

19. The instant application seeks for orders restraining the 1<sup>st</sup> Defendant/Respondents either by themselves or their employees, agents and/or servants from selling, advertising for sale or disposing off to a third-party motor vehicle registration numbers KDH 510D and KCH 368T pending the hearing and determination of this application and suit. The bone of contention revolves around issues of overcharging of interest rates as opposed to what was agreed.



20. The preliminary objection is premised along an argument that the 1<sup>st</sup> Respondent is a cooperative society and thus this dispute should be determined before the Cooperatives Tribunal in the first instance. In effect, the PO seeks to oust the jurisdiction of this court to handle this application and the intended suit. Upon perusal of the documents attached, I am not persuaded that the 1<sup>st</sup> defendant's business falls within the Cooperative Societies or *Sacco Societies Act*. The documents suggest transactions that are common with either banks or microfinance institutions. I therefore tend to agree with the Applicant's description in the copy of the plaint that the 1<sup>st</sup> Defendant is a microfinance institution involved in the business of savings and credit.
21. It is trite that jurisdiction is everything as laid down by Justice Nyarangi (as he then was) in the case of *Owners of the Motor vessels Lillian S Vs Caltex Oil (K) Ltd* Civil appeal no. 540 of 191389. However, my view is that authorities apply only where they are supported by facts. In this instance, the facts lean more towards a microfinance institution than to a Sacco. In any case the, 1<sup>st</sup> Defendant/Respondent has not attached any document in support of the PO or the allegation that it is a Sacco. I find that this court has original jurisdiction to handle this matter. For the above reasons, the PO is dismissed.
22. I will then proceed to consider the merits of the application.
23. The principles guiding the grant of restraint orders/temporary injunctions pending hearing and determination of a suit are well provided under Order 40, rule 1 of the *Civil Procedure Rules* that:

Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

24. In *John Maurice Ayeiye v Kenya Commercial Bank Limited & another* [2021] KEHC 1815 (KLR) Karanjah J stated;

“The principles applicable in such circumstances were long settled in the case of *Giella Vs. Cassman Brown & Co. Ltd.* (1973) E.A. 358, where it was held that:-

“The conditions for the grant of an interlocutory injunction are now well settlement in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the 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 a balance of convenience.”



- (8) These principles were reiterated in the case of *Nguruman Limited Vs. Jan Bonde Nielsen & others* (2014) eKLR, where it was held:-

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

- (a) establish his case only at a prima facie level
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) allay (sic) any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests (sic) the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

- (9) With regard to the first principle, it was stated in *Mrao Ltd Vs. First American Bank of Kenya & others* (2003) eKLR, that a prima facie case”, includes;

“but is not confined to a “genuine and arguable case.”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as 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. 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.”

10. In the *Nguruman Ltd case* (supra), the court went on to say that:-

“the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction, has a right which has been or is threatened with violation. Positions



of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case.”...

- (14) With regard to the second principle, the applicant was required to demonstrate irreparable injury if he is not granted a temporary injunction. In the *Nguruman Ltd case* (supra), the court held that:-

“the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying no interlocutory order of injunction should normally be granted however strong the applicant’s claim may appear at that stage.”

25. Going by the principles laid above, I will first consider whether the application meets the three-test threshold. In the instant application, the applicant seeks specifically sought for orders:
- i. The Defendants/Respondents, either by themselves or their employees, agents and/or servants be restrained by an order of this Honourable court from selling, advertising for sale or disposing off to a third-party Motor Vehicle registration numbers KDH 510 D and KCH 368T until the hearing and determination of this Application.
26. The application is based on the ground that the motor vehicles attached are the only means and tools of trade for delivering his customers’ goods and that the 1st Defendant’s act has crippled his business; that he continues to incur heavy costs in hiring vehicles for delivering goods to his customers and that the 1<sup>st</sup> defendant is not likely to suffer any prejudice if the application is granted as prayed.
27. In terms of the orders sought, the application and its grounds do not make any reference to the land parcels. However, the same is only mentioned in the supporting affidavit at paragraph 6 where it is averred that the applicant deposited Title Deeds over LOC.17/Saba Saba/1147, Title Deed over Eusanyiro Ilpejeta Block 1/13188 and Logbooks for Motor Vehicles KDH 510D and KCH 268 to secure a loan of kshs. 28,000,000 which was to attract interest of 18% p.a. There is no dispute that there has been a banking and customer relationship between the applicant and the respondent.
28. I will therefore refrain from making any orders with regard to the two land parcels. I note however that one of the reliefs sought in the plaint is a discharge of securities being the subject two parcels and two logbooks but that is not a subject of this application.
29. From the totality of the evidence, there is no dispute that there has been a banking and customer relationship between the applicant and the respondent whereby the respondent has advanced money to the Applicant from time to time and specifically, a loan of kshs.28,000,000. However, the applicant disputes the loan default on account of the enhanced interest on overdrafts by the respondent from the negotiated 2.5% to 5% based on which his account went into arrears.
30. The copy of letter dated 16<sup>th</sup> October 2024 addressed to the Auctioneer states in part that: “the debtor has defaulted on the loan in our books...” It does not specify which loan has been defaulted. Whether it was the overdrafts or the loan contracted vide letter of offer and acceptance dated 7th July 2023 against which the title deeds and log books were placed as security. It is also notable that the sums in question were also guaranteed by the Applicants deposits.



31. The Respondent has responded to this application by way of notice of preliminary objection to which submissions were made. The since has since considered and dismissed the same. There is no other evidence either in the form of a Replying Affidavit or otherwise.
32. Based on the above this court finds that the applicant raises prima facie triable issues, and that the Applicant's rights are likely to be infringed and he will continue to suffer irreparable injury if the Respondent continues to withhold the suit motor vehicles which are his tools of trade.
33. For the above reasons I find that the application is merited and deserving of the orders sought. I hereby grant an interlocutory injunction restraining the Defendants/Respondents, either by themselves or their employees, agents and/or servants from selling, advertising for sale or disposing off to a third-party Motor Vehicle registration numbers KDH 510 D and KCH 368T until the hearing and determination of this Application.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 22<sup>ND</sup> SEPTEMBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

