Riungu M & another v Capital Sacco Limited & another; Riungu & 2 others (Interested Parties) (Civil Case E014 of 2025) [2025] KEHC 12955 (KLR) (4 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12955 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL CASE E014 OF 2025

HM NYAGA, J

SEPTEMBER 4, 2025

BETWEEN

FREDRICK RIUNGU M ..... 1ST PLAINTIFF

JANE KANUNU NYAGAH ..... 2ND PLAINTIFF

AND

CAPITAL SACCO LIMITED ..... 1ST DEFENDANT

VIEWLINE AUCTIONEERS ..... 2ND DEFENDANT

AND

LYNE GAKII RIUNGU ..... INTERESTED PARTY

LOVE KENDI RIUNGU ..... INTERESTED PARTY

LEVIS KIMATHI RIUNGU ..... INTERESTED PARTY

RULING

1. This ruling relates to two applications namely:-

   a). Notice of motion dated 27/6/2025 by the plaintiffs/applicants, seeking the following orders:-

      i. Spent.

      ii. That pending the hearing and determination of the application inter-parties, an order of temporary injunction be issued, restraining the respondents, by itself, its auctioneers, auctioneers' agents, employees, agents or anyone else acting or claiming under its name, from attaching, advertising for sale, selling, transferring taking possession or in any other way whatsoever from interfering or dealing with Land Parcel No. Nkuene/Taita/1556.

iii. That pending the haring and determination of the suit inter-parties, an order of temporary injunction be issued, restraining the respondents by itself, its auctioneers, auctioneers agents, employees, agents or anyone else citing or claiming under its name, from attaching advertising for sale, selling, transferring taking possession or in any other way whatsoever from interfering or dealing with land parcel Nkuene/ Taita/1556.

iv. That costs of the application.

b). Notice of motion dated 21/7/202 by Lynne Gakii Riungu, Love Kendi Riungu, Levis Kimathi Riungu who described themselves as interested parties, seeking the following orders: -

i. Spent

ii. That the applicants Lynn Gakii Riungu, Love Kendi Riungu and Levis Kiathi Riungu be enjoined as interested parties in this suit.

iii. That the Honourable court be pleased to issue temporary orders of inhibition on land parcel no Nkuene/Taita/1556 restraining the 1st and 2nd defendant/respondents from selling, alienating or dealing in any manner pending the hearing and determination of this application inter-partes.

iv. That upon prayer (2) being granted the interested parties be granted leave to enter appearance, file defence and comply with order 11 of the CPR before the suit is set down for hearing.

v. That the Honourable court be pleased to issue temporary orders of inhibition on land parcel No. Nkuene/Taita/1556 restraining the 1st and 2nd defendant/respondent from selling or dealing in any manner, pending the hearing and determination of the main suit.

vi. That the costs of this application be provided for.

2. A brief history of the matter is that the plaintiffs moved the court seeking injunction orders against the respondents restraining them from attaching, advertising for sale, selling or transferring the property known as Nkuene/Taita/1556.

3. Before the court could determine the said application, the interested parties moved the court seeking similar orders in respect to the same property known as Nkuene/Kithunguri/1277.

4. I will deal with each application sequentially.

5. The gist of the plaintiff's application is that the first applicant had had obtained a loan of Ksh. 4,000,000/= from the 1st defendant in 2019. That despite to hard financial times, he tried to meet his obligations towards repayment of the loan. That he approached the 1st defendant to know how much loan was paid and what remained, but it failed to provide the information. That the 1st respondent has instructed the 2nd respondent to sell their property.

6. The applicants further aver that the requisite statutory notices have not been served upon them and thus, the intended eviction is not based on any law and is a breach of their constitutional rights, the loan agreement and fiduciary duty owed to them by the 1st defendant guiding the realization of the securities.

7. The applicants further state that the 1st respondent ought to spread the auctioneer's fees within the loan repayment as they continue to service the loan. That it appears like the 1st respondent is hell bent on disposing the property in question notwithstanding that the loan has been repaid and it is to date.

8. The applicants further aver that the respondents are in breach of Section 90 of the *Land Act* , 2012. That the respondents stifled their redemption remedy by not serving a redemption notice.

9. The applicants state further that if the intended sale proceeds they shall suffer irreparable harm.

10. In response, the 1st respondent filed a replying affidavit sworn by Nathaniel Kithnji Ikiugu, its debt recovery manager.

11. In a nutshell, the 1st respondent's case is that it has only initiated recovery process in respect of land parcel no. Nkuene/Taita/1556, and have not done so in respect to land parcel Nkuene/ Kithunguri/ 1277.

12. The 1st respondent further avers that the 1st applicant approached it for a loan and subsequently, a charge was registered over land parcel No. Nkuene/Taita/1556. That the 1st applicant failed to service the loan as agreed, and had only repaid Ksh. 319,931/=. That as at 1/6/2025, the outstanding loan stood at KSh. 1,534,370 and continues to accrue interests and other charges. That as a result of the default it issued the statutory 90 day notice to the applicants which was duly served that there was continued default and so it issued a 40 day notice of sale as required by the law. That since there was continued default, subsequently, the auctioneers issued a 45 days redemption notice as required and a notification of sale.

13. It is further averred that the property in question has been valued at KSh. 10,000,000/= with a forced value of Ksh. 7,500,000/= . It is further averred that the applicants have come to court with unclean hands as the loan has not been paid as agreed. That the applicants have never approached the 1st respondent with a request for accounts and in any event, that information is available on their own statements/accounts.

14. The application was canvassed vide written submissions which I will not rehash.

15. Being an application for interlocutory injunction, the applicants have to surmount the threshold set out in Giella Versus Casman Brown Ltd. (1973) EA 258.

16. There is no dispute that the 1st applicant obtained a loan facility from the 1st respondent and that the 2nd applicant duly executed the spousal consent as required. This is clearly borne by the annextures filed by the 1st respondent.

17. Although the applicants claim to have repaid the loan, that claim is ought rightly false. The statement of account shows there was consistent default on the part of the 1st applicant in servicing the loan. For instance, between 17/11/2022 and 17/5/2023, the applicant only paid Ksh. 8,984/- as interest on the loan. From 18/55/2023 to 17/6/2024 not a single coin was paid.

18. If the 1st applicant claims to have been repaying the loan, he would at least have evidence of such payments with him. He has none. To turn around and tell the court that he had sought to know how much he had paid and what was owed,in my view, is an attempt to obfuscate the fact of the matter, that he has defaulted on the loan repayment.

19. Given the above, I am not satisfied that the applicants have made out a prima facie case.

20. Looking at the prayers sought, I am of the view that the applicants only came to court to buy time. This court cannot re-write a contract between the parties. Having defaulted on the loan, the 1st respondent was entitled to exercise its powers of sale under the charge.

21. From the material before me, it is also quite evident that the applicant as were duly served with the requisite notices vide registered post to the address that they had provided. As such, I do not see any breach of Sections 90 or 96 of the *Land Act* as alleged.

22. Even though the applicant claim that the property is their matrimonial home, it has to be remembered that they are the same ones who voluntarily offered it as security for the loan. Such sentimental issues cannot be entertained by the court.

23. On the question of the valuation of the property, I am satisfied that the same was properly done. The forced value is within the limit allowed under Section 97 of the *Land Act*.

24. Having considered the matter, I find that the application dated 27/6/2025 lacks merit and is dismissed with costs.

25. The respondents are at liberty to proceed to re-advertise the property for sale to recover the outstanding loan.

26. I will now deal with the 2nd application.

27. The applicants in this application state they are the children of the applicants in the first application. That Land parcel No. Nkuene/ Taita/1556 has served as their ancestral home and they have lived therein since childhood. That they have become aware of the imminent threat to their home vide a sale by auction. That despite efforts to ascertain the precise outstanding loan, the 1st defendant/respondent continues to demand Ksh. 5,500,000/= as outstanding loan. That the valuation of the two properties is Ksh. 23,200,000/=, for exceeding the alleged debt.

28. The applicants further state that the intended sale poses a direct and existential threat to their constitutional right to housing under Article 43 (1) (d) dignity under Article 28 and property under Article 40. They state that their participation in the suit is necessary, and to adjudicate the matter without them could render any judgment incomplete and potentially inevitable.

29. The 1st respondent filed grounds of opposition to the said application based on the following grounds:-

    a. The applicants have no locus standi under Section 23(1) of the *Land Act*.

    b. The application is meddled and defective as it seeks joinder and other contemporaneous relief in one application.

    c. The joinder will cause a delay and procrastination of the proceedings

    d. That all the reliefs being sought by the applicants are similar to the ones being ought by the plaintiffs.

    e. No prejudice will be caused by the non-joinder of the applicant

    f. The applicants have no personal and clear identifiable interest in the said matter.

30. The parties also filed submission on the application, which I will not rehash. It suffices to state that, I have duly considered them and will refer to them.

31. The applicants, have come to this court as children of the plaintiffs, claiming joinder to the suit and an injunction. I must state that this is a novel application, which in essence seeks the same orders as those by the plaintiffs herein.

32. In my view, and in agreement with the respondent, the applicants have no locus standi in the matter. The subject matter herein, is the subject of a contract between the 1st plaintiff and the 1st respondent. The law only recognizes the right of a spouse, when it comes to family.

33. Section 103 of the act does not contemplate any remedy to a child of a charge. It provides as follows:-

> " 103. (1) An application for relief against the exercise by the chargee of any of the remedies referred to in section 85 (3) (a) and (b) may be made by—
>
> (a) the chargor;
>
> (b) if two or more persons are joint chargors, by one or more of them on their own behalf;
>
> (c) a spouse of the chargor;
>
> (d) a lessee of the chargor; or
>
> (e) the trustee in bankruptcy of the chargor.
>
> (2) If an application made in accordance subsection (1) (b) is not made by all the joint chargors, then, unless the court orders otherwise, it must be served on all the joint chargors.
>
> (3) An application for relief may be made at any time after the service of a notice under section 90 (1), section 91 (2), section 94(1), section 95 (1), or during the exercise of any of the remedies contemplated in those sections.
>
> (4) An application for relief is not to be taken as an admission by the chargor or any other person applying for relief that—
>
> (a) there has been a breach of a covenant of the charge by the chargor;
>
> (b) by reason of such a breach, the chargee has the right to exercise the remedy in respect of which the application for relief has been made;
>
> (c) all notices that were required to be served by the chargee were properly served; or
>
> (d) the period for remedying the breach specified in the notice served under section 90 was reasonable or had expired,and the court may grant relief without determining all or any of the matters described in paragraphs (a), (b), (c) or (d)."

34. The applicants are all adults and cannot, even in the most sympathetic circumstances, convince the court that they deserve the remedies sought.

35. In my view, the present application, which was filed just days before the date that this court was meant to deliver a ruling on the first application is a further attempt to thwart the 1st respondents attempt to

exercise its powers of sale. The applicants are not privy to the contract between the chargor and chargee and thus cannot be heard to seek to be joined in the suit.

36. Even by the longest stretch of imagination, their claim of violation of their supposed rights cannot be invoked to stop a sale of property that was willingly offered as security and there has been persistent default.

37. For the foregoing reasons, I find that the application dated 21/7/2025 cannot be sustained since the applicants have no locus standi to be joined to this suit.

38. The second application is also dismissed with costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF SEPTEMBER, 2025.

H. M. NYAGA,

JUDGE.