



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 1 OF 2021**

**SUSAN WANJIRA GATEGWA.....APPLICANT/PLAINTIFF**

**VERSUS**

**UNAITAS SACCO SOCIETY LIMITED.....RESPONDENT/1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS.....RESPONDENT/2<sup>ND</sup> DEFENDANT**

**RULING**

**Brief Facts**

1. The applicant in his application dated 20<sup>th</sup> January 2021 seeks for orders for injunction to issue against the respondents from advertising for sale, selling whether by public auction or private treaty disposing off or otherwise completing by conveyance or transfer of any sale completed by public auction or private treaty, taking possession, appointing receivers and exerting powers conferred under Section 90(3) of the Land Act, leasing, letting, charging or otherwise interfering with the applicant's ownership of and title to Land Title no. AGUTHI/GATITU/3673 pending the hearing and determination of this suit.

2. The application is supported by the affidavit of the applicant with several grounds contained therein.

**The Applicant's Case**

3. The applicant states that the 1<sup>st</sup> respondent advanced a loan facility to her on 15<sup>th</sup> January 2019 for the sum of Kenya Shillings Thirty Five Million, Seven Hundred and Seventeen Thousand Three Hundred and Thirty and Eight Cents (Kshs. 35,717,330.08/-) and secured a charge over Title No. AGUTHI/GATITU/3673. She states that she never got a copy of the charge from 1<sup>st</sup> respondent as required.

4. The applicant contends that she made her monthly payments until April 2020 when covid-19 hit when some of her tenants on the suit property were unable to pay the rent. She thus requested the 1<sup>st</sup> respondent to restructure her loan which request was declined. Notably, she was also never given a chance to redeem the loan as required by law nor was she served with any demand notice or statutory notice from the 1<sup>st</sup> respondent. Consequently, the applicant states that the 1<sup>st</sup> respondent's statutory power of sale has not become due for it to proceed with the sale of the security.

5. It is the applicant's case that she has endeavoured to settle the loan amount and has made monthly payments including the last payment made on 29<sup>th</sup> December 2020 of Kshs. 500,000/-. Subsequently, the applicant contends that she was shocked to see an advert in the Daily Nation newspaper on 11<sup>th</sup> January 2021, placed by the respondents, advertising for the sale by public auction of the suit property to be held on 28<sup>th</sup> January 2021. Additionally, the applicant found the notice to sell at the post office. She contends that she was unable to access the post office from October 2020 to December 2020 as she had been admitted in hospital.

6. The applicant further contends that a copy of the notice to sell was never served upon her spouse or the lessee of the suit property as required under Section 96(3) of the Land Act. Consequently, the applicant is apprehensive that the respondents will dispose of her property to her detriment and in violation of the law. She adds that she risks losing proprietorship over the suit property once the 1<sup>st</sup> respondent exercises its statutory power of sale, as the suit property is her source of livelihood.

7. The applicant contends that unless the application is determined and the orders sought granted, the respondents will violate the law and advertise and sell the charged property rendering the application and the suit herein nugatory. Further, the 1<sup>st</sup> respondent will not suffer any prejudice if the orders sought herein are granted as the suit property is charged in its favour and they are still holding the title document and in any event, the 1<sup>st</sup> respondent can adequately be compensated by way of damages.

8. The applicant prays that in the interest of justice and fairness that the instant application be allowed as prayed.

### **The Respondents' Case**

9. The 1<sup>st</sup> respondent in opposition that the applicant has not denied that she is indebted to the 1<sup>st</sup> respondent and in the circumstances, the 1<sup>st</sup> respondent has a right to exercise its statutory power of sale to recover the advanced loan amounts.

10. By letter of offer dated 15<sup>th</sup> January 2019, the 1<sup>st</sup> respondent advanced to the applicant a Special Project Loan Facility in the sum of Kshs. 35,717,330.08 together with interest, costs and other bank charges being a consolidation of three other loan facilities. It was a term for the grant of the loan facility that it would be repaid on demand, and if not otherwise demanded, by way of 185 equal monthly instalments with interest at the rate of 14.5% per annum. It was a further term that the repayment of the facility was to be secured by way of an existing charge dated 1/10/2016 over land title number AGUTHI/GATITU/3673 securing a sum of Kshs. 10,000,000/- an existing further charge dated 6/9/2017 over the same parcel securing a sum of Kshs. 25,000,000/- and an existing 2<sup>nd</sup> Further Charge dated 2/8/2018 over the same parcel securing a sum of Kshs. 2,000,000.

11. The respondent contends that the applicant defaulted in the repayment of the loan facility with the amount owing as at 15/1/2021 being Kshs. 35,302,029.82/-. She further adds that contrary to what the applicant stipulates, she began defaulting on the payments in the year 2019 before the onset of the pandemic. Consequently, the 1<sup>st</sup> respondent issued to the applicant various demand letters between 2019 and 2020 requesting her to regularize the default however the applicant never adhered to the same. Thus, the 1<sup>st</sup> respondent elected to sell the suit property in pursuance of its statutory power of sale under the charge.

12. The respondent states that through its advocates, it issued to the chargor and the applicant a three months' statutory notice dated 12/3/2020 in pursuance to Section 90 of the Land Act, 2012 and served the same upon her vide registered post. Upon lapse of the statutory period, the 1<sup>st</sup> respondent issued to the applicant a 40 days' notice of intention to sell the suit property pursuant to Section 96 of the Land Act, 2012 which was served upon her by registered post.

13. The 1<sup>st</sup> respondent also caused a valuation of the suit property to be undertaken by Messrs. Metrocosmo Limited to ascertain the suit property's forced sale value in preparation for the sale of the suit property by way of public auction. The valuation was undertaken and a report dated 31/08/2020 was filed.

14. Subsequently upon instruction by the 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent issued and served the applicant a 45 days redemption notice and a notification of sale dated 16/11/2020 pursuant to Rule 15(b) & (d) of the Auctioneers Rules 1997. Upon expiration of the said period, the 2<sup>nd</sup> respondent advertised the sale of the suit property by way of public auction in the Daily Nation Newspaper dated 18/1/2021.

15. As such, the respondents contend that they adhered to the law and procedure in invoking and pursuing its statutory right of sale over the suit property. Consequently, the respondents contend that the applicant does not satisfy the test for the grant of a temporary injunction and thus her application ought to be dismissed with costs.

16. Parties disposed of the application by way of filing written submissions.

### **Applicant's Submissions**

17. The applicant relied on the case of **Giella vs Cassman Brown Limited [1973] EA 358** which set out the principles a court ought to apply when granting an interlocutory injunction and **Order 40 (1)(a) and (b) of the Civil Procedure Rules 2010**. She also relied on the case of **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125** to expound on what constitutes a prima facie case.

18. It is the applicant's submission that there is no stipulation on what monthly payments she was expected to pay in the letter of offer and the charge. She adds that from her account statement it is evident that she made payments to wards the loan monthly.

19. The applicant further submits that she was not explained to by the 1<sup>st</sup> respondent what constituted her default as per Section 80 of the Land Act which provides that every charge instrument shall contain an explanation on the consequences of default.

20. It is the applicant's submission that she was never served with the statutory notices pursuant to section 96(2) of the Land Act nor was she given an opportunity to exercise her equity of redemption over the said property. She adds that the suit property is her main source of livelihood and she stands to suffer great harm if it is sold. As such, the respondents have infringed on the applicant's rights and the applicant has established a prima facie case with a probability of success in view of the breached and violations of the Land Act by the respondents.

21. The applicant further submits that an award of damages will not suffice as the suit property is of sentimental value to her and she has invested so much money and time to build the premises and further it is her main source of income and livelihood. Moreover, damages are not a suitable remedy where a plaintiff has established a clear legal right or breach. The applicant relies on the case of **J.M. Gichanga vs Co-operative Bank of Kenya Ltd (2005) eKLR**. The applicant reiterates that she has made out a prima facie case with a high probability of success and thus the court need not consider whether damages can be an adequate remedy for the applicant.

22. The applicant submits that the balance of convenience tilts in her favour. She relies on the case of **Alice Awino Okello vs Trust Bank Ltd & Another LLR No. 625 (CCK)** which was quoted in the case of **Kisimani Holdings Ltd & Another vs Fidelity Bank HCCC No. 744 of 2012 [2013] eKLR** and states that the balance of convenience tilts in favour of the grant of an injunction in order to preserve the suit property pending the hearing and determination of the suit herein.

## **Respondents' Submissions**

23. The respondents submitted that since the applicant did not file a further affidavit in response to the depositions in the replying affidavit, the depositions in the replying affidavit are not controverted. The respondents rely on the case of **Daniel Kibet Mutai & 9 Others vs Attorney General [2019] eKLR**.

24. The respondents further submit that they have challenged the competency of the application in *limine*. They contend that since the only relief sought in the main suit is an order of injunction on similar terms as the one sought in the application, were the court to allow the application and grant an injunction at this stage of the proceedings, there will be nothing left for determination in the main suit. Further, the respondents submit that a prayer for an injunction cannot be brought in a vacuum. It must be premised on a substantive claim which can help the court establish whether a prima facie case has been made out. The respondents relied on the case of **Ernest Mwangi Waigi vs Nation Bank of Kenya Ltd [2010] eKLR** to illustrate their point.

25. The respondents further submit that their second objection is to the effect that there is no basis for the court to issue an injunction because the applicant has expressly admitted as having defaulted in the repayment of the loan facility. The respondents rely on the case of **Mrao Ltd vs First American Bank of Kenya & 2 Others [2003] eKLR** and submit that the application ought to be struck out at this juncture.

26. The respondents further submit that even if the application was competently drawn and presented, it would still not have merited the grant of the prayers sought because the applicant has failed to satisfy the conditions as set out in **Giella vs Cassman Brown & Co. Ltd [1973] EA 358 and Kenya Commercial Finance Company Ltd vs Afraha Education Society [2000] 1 EA 86**.

27. The respondents contend that the applicant has not established a prima facie case with a probability of success as set out in **Mrao Ltd case (Supra)**. The applicant has laid out several reasons as her basis for the grant of an order of an injunction. She stated that she was not served with the requisite statutory notices, however the respondents submit that they have demonstrated that they did serve her with the three months' statutory notice under section 90 of the Land Act dated 12/3/2020; the 40 days' notice of intention to sell under section 96 of the Act dated 24/6/2020 and the 45 days redemption notice and notification of sale under Rule 15 of the Auctioneers Rules, 1997 dated 16/11/2020. The respondents have annexed accompanying postage receipts to proof service upon the applicant.

28. The applicant further contended that the 1<sup>st</sup> respondent refused to restructure the loan facility to accommodate her in light of the pandemic which impacted on her ability to repay the loan facility. The respondents however submit that the applicant's default preceded the covid 19 pandemic as can be seen from the account statement. The applicant is thus being insincere and further has not provided any proof that she approached the 1<sup>st</sup> respondent for a restructure of the loan. In any event, the 1<sup>st</sup> respondent submits that it is under no legal obligation to accede to such a request.

29. The applicant also raised the issue that she was not given an opportunity to redeem the charged property. The respondents submit that they issued the applicant with the requisite statutory notices. Further, before the notices, the 1<sup>st</sup> respondent served the applicant with three reminders requesting her to regularise her account.

30. On the issue regarding the notice of intention to sell under Section 96(2) of the Land Act having been served upon the applicant's spouse and lessees of the property in accordance with Section 96 (3) of the Act, the respondents submit that the applicant swore affidavits that she was not married. Further, the suit property was not leased to anyone as no documentation in demonstration thereof was provided by the applicant. Therefore based on the above reasons, the applicant has failed to demonstrate a justiciable complaint against the respondents. As such, the applicant has failed to establish a prima facie case with a probability of success as defined in the case of **Mrao Ltd vs First American Bank of Kenya & 2 Others [2003] eKLR**.

31. On the other hand, the respondents submit that they have complied with all the legal requirements in exercising the 1<sup>st</sup> respondent's statutory power of sale. They have issued the requisite notices and the 1<sup>st</sup> respondent has undertaken a forced sale valuation of the charged property under section 97 (2) of the Land Act.

32. The respondents submit that in line with the dictum in Kenya Commercial Finance Company Ltd vs Afraha Education Society [2001] 1 E.A 86 the application stands dismissed without the need to consider the other two principles of whether the applicant will suffer irreparable loss and whether the application should be decided on a balance of convenience. As such, the respondents pray that the application be dismissed.

## **Issues for determination**

33. On perusal of the application, the affidavit in support thereof, the replying affidavit and the submissions of the parties, the main issue for determination is whether the plaintiff/applicant has met the requisite conditions to warrant the granting of a temporary injunction.

## **The Law**

34. 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.

35. 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

36. 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 several. Firstly, 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. 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.”

37. It is important to note at this juncture that it is not in dispute that the applicant took a credit facility with the 1<sup>st</sup> respondent. Further, the applicant does not dispute that she is in arrears of the said loan facility.

38. It is the applicant’s submission that the respondents did not serve her with the statutory notices as provided for under **section 90 of the Land Act, section 96(1) of the Land Act and Rule 15(d) of the Auctioneer Rules.**

39. Section 90(1) of the Land act provides:-

**If a chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in the performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the charge may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.**

40. Section 96(1) of the Land Act 2012, states as follows:-

**(1) Where a charger 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 chargee under section 90(1), a charger may exercise the power to sell the charged land.**

41. Once the charge has decided to exercise its statutory power of sale, section 96(2) of the Land Act puts another caveat that:

**(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.**

42. **Rule 15(d) of the Auctioneer Rules** provides:-

**Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property, give in writing to the owner of the property a notice of not less than forty five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction.**

43. On perusal of the documents, the three-month statutory notice under **Section 90(1) and (2)** dated 12<sup>th</sup> March 2020, forty days’ notice to

sell under **Section 96(2) Land Act** dated 24<sup>th</sup> June 2020, 45 days statutory notice dated 16<sup>th</sup> November 2020 and the Notification of Sale dated 16<sup>th</sup> November 2020 have all being addressed to the applicant vide postal address 1922-10100 Nyeri. The documents were all served upon the applicant vide registered post and the respondents have attached certificate of postage in respect of these documents to prove service.

44. The Charge and the 2<sup>nd</sup> Further Charge indicate that **all notices shall be deemed as properly served on the chargor if served on the chargor or the personal representative of the chargor personally or if left for the chargor at the chargor's last known place of residence or business in Kenya or if sent by registered post in a stamped envelope addressed to then chargor at the chargor's last known postal address in Kenya.**

45. It follows therefore that since the respondents have shown evidence that they effected proper service upon the applicant, the burden now shifts to the applicant to show that she did not receive the said notices. It is clear vide the charge instruments that the 1<sup>st</sup> respondent's obligation was to send any notices to the postal address given by the applicant in the charge instruments and in the manner provided therein. The applicant did not discharge that burden in regard to the receipt of the documents.

46. In this regard, I am of the considered opinion that the respondents effected proper service and as such the applicant has failed to show a prima facie case. I rely on the case of **HCCC No. 115 of 2012 Abdulkadir atex Commercial Supplies Limited and Another vs Euro Bank Limited (In Liquidation)** where Musinga J held that:

47. **"It is not disputed that the borrower is in arrears of its loan repayment to the 1<sup>st</sup> respondent. The court has established that an appropriate statutory notice was served upon the applicant....in the circumstances, the applicant has not made out a prima facie case with a likelihood of success."**

48. Additionally, the 1<sup>st</sup> respondent has discharged its duty under Section 97 of the Land Act to ensure that a forced valuation has being undertaken by the valuer. 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."**

49. For the reasons above, it is evident that the 1<sup>st</sup> respondent's statutory power of sale crystallized and they followed all the legal requirements in exercise of its statutory power of sale. Additionally, it is also evident that the 1<sup>st</sup> respondent sent to the applicant three reminders requesting her to regularise her account. These reminders dated 2/7/2019, 18/12/2019 and 24/2/2020 gave the applicant an opportunity to regularise her account and hereby redeem her property. As such, the applicant's contention that she was not given an opportunity to redeem her property does not hold water.

50. The applicant has further contended that the 1<sup>st</sup> respondent did not serve the Notice of Intention to Sell upon the applicant's spouse and the lessees of the property. On perusal of the documents, the applicant has sworn an affidavit dated 1<sup>st</sup> September 2016 to the charge and another affidavit dated 1<sup>st</sup> August 2018 to the 2<sup>nd</sup> Further Charge to the effect that she was not married. Additionally, the applicant has not provided any proof to show that the suit property at the time was leased to anyone and that she conveyed the same information to the 1<sup>st</sup> respondent.

51. For the above reasons, the applicant has failed to establish that she has a prima facie case with a probability of success.

52. In **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."**

The issue that follows is whether the applicant has demonstrated that she will suffer irreparable injury.

53. 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 formalised. 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."**

54. The applicant submits that she has sentimental value to the suit property as she has invested so much money and time to build the

premises and further that it is her main source of income and livelihood and as such monetary compensation is not sufficient.

55. All the foregoing analysis leads to a considered view that the applicant has not shown that she stand to suffer irreparable harm. In my view, this reason is not valid in that the properties were given as security for a loan with the understanding that in case of default, the same may be sold by the chargee. Sentimental value is not a ground for consideration in an application for injunction. The suit property has a commercial value which can be ascertained and therefore the loss can be compensated by way of damages and the 1<sup>st</sup> respondent being a financial institution is presumed to possess the capacity to make good any such loss unless the contrary is proved which the applicant has not done.

56. The other issue to consider is the issue of balance of convenience. It is worth noting that the applicant has not met the requirement as to a prima facie case and has also failed to show how she stands to suffer irreparable harm. The 1<sup>st</sup> respondent is a reasonably sound financial institution which stands better chances to compensate the applicants should the applicants succeed in the trial. If an injunction is granted to restrain the 1<sup>st</sup> respondent from exercising its statutory power of sale, the amount of debt shall continue to rise exponentially and the security may prove to be insufficient to cover the ultimate balance. Thus, the balance of convenience tilts against granting of the interlocutory injunction.

57. Moreover, the applicant herein has not denied being indebted to the 1<sup>st</sup> respondent. As such, she is not warranted to enjoy the fruits of equity. In the case of **Daniel Kamau Mugambi vs Housing Finance Company of Kenya Ltd [2006] eKLR** the court quoted with approval the Court of Appeal decision in **Francis J.K Ichatha vs Housing Finance Company of Kenya, Civil Application No. 108 of 2005** as follows:-

**“A plaintiff should not be granted an injunction if he does not have clean hands, and no court of equity will aid a man to derive advantage from his own wrong, for the plaintiff seeks this court to protect him from his own default. He who seeks equity must do equity....”**

58. Similarly, in **Samson Aliton Okello vs Barclays Bank of Kenya Limited [2009] eKLR**, Lessit J observed that **“an injunction is an equitable remedy and a party seeking such a remedy must conduct himself in relation to the suit and the matter at hand in a manner that will meet the approval of a court of equity.”**

59. The applicant denied service of the requisite notices, when in fact there exists that evidence on record. She accused the respondent of not serving her spouse while the records in produced by the respondent demonstrate that she was single when she was advanced the facility. If she got married thereafter that cannot affect the contract between her and the respondent. The applicant had defaulted on the loan since 2019 but told the court it was in 2020 due to the pandemic. This conduct of the applicant made of untruths does not earn the approval of a court of equity.

60. From the facts of this application, I opine that the applicant has not approached the court with clean hands and she should not expect the court to grant her any equitable remedy.

61. In conclusion, I find that the plaintiff has failed to meet the threshold of granting an injunction.

62. I therefore find no merit in the application dated 20/01/2021 and dismiss it with costs to the respondent.

63. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 17<sup>TH</sup> DAY OF JUNE 2021.**

**F. MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEO LINK THIS 17TH DAY OF JUNE 2021**