



REPUBLIC OF KENYA



**KENYA LAW**  
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**Issa v Kantaria & 4 others (Land Case E080 of 2025)  
[2025] KEELC 4493 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4493 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E080 OF 2025  
CA OCHIENG, J  
JUNE 17, 2025**

**BETWEEN**

**HAWA HAJI ISSA ..... PLAINTIFF**

**AND**

**MRANDULA SURESH KANTARIA ..... 1<sup>ST</sup> DEFENDANT**

**SURESH KANTARIA ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH MWANGI GIKONYO ..... 3<sup>RD</sup> DEFENDANT**

**GARAM INVESTMENTS AUCTIONEERS ..... 4<sup>TH</sup> DEFENDANT**

**MHAMED NUR MOHAMUD MAALIM ALI AND SAMIRA HASSA SAID  
(TRADING AS) MWINGI SPECIALIST HOSPITAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion application dated the 24<sup>th</sup> February 2025 where she seeks the following Orders:
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. Spent.
  - e. That pending hearing and determination of the main suit, the Honourable Court be pleased to issue an order stopping the 1st -5th Defendants either singly/jointly from evicting the Plaintiff from the suit land, Title Number LR /209 /8 343/ 151, South "C".



- f. That upon hearing and determination of this application inter-parties, the Honourable court be pleased to issue an order directing that any proceeds from the sale of the property by way of auction be deposited with the court pending the hearing and determination of the main suit.
  - g. That upon hearing and determination of the main suit, the Honourable county be pleased to issue an order allowing the Plaintiff to exercise her right of first refusal which gives her priority in the event of sale of the property either by the landlord himself or by way of auction as provided in the lease agreement.
  - h. Costs and incidents be borne by the Defendant.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. She avers that she is a rent paying lessee on the suit property and that on 21<sup>st</sup> January 2025, the 1<sup>st</sup>-4<sup>th</sup> Defendants sold the property to the 5<sup>th</sup> Defendant by public auction while she was still in occupation and without giving her a ninety (90) days' notice as contemplated under clauses 3 (a), (b) (f) and (g) of their Tenancy Agreement, which also gave her the right of first refusal in the event the landlord decided to sell, lease/ transfer the suit property to a third party. She claims that as a result, she is in imminent danger of being evicted by the new owner of the suit property.
  3. The 2<sup>nd</sup> Defendant swore a replying affidavit in support of the application. He avers that he is the registered proprietor of the suit property and admits that the Plaintiff is his tenant, who has consistently been paying rent. He claims that vide a Ruling dated the 5<sup>th</sup> November 2024 issued in Divorce Case No. 6 of 1997, Hon. A.S Lesootia, a Deputy Registrar of the Family Division of the High Court ordered a public auction of the suit property and in doing so, she usurped the powers of a Honourable Judge. He further claims that he has filed an Appeal to the said Ruling.
  4. He contends that owing to the fact that there was a live suit relating to the suit property, the doctrine of lis pendens prevented the 4<sup>th</sup> Defendant from carrying out a public auction.
  5. In opposition to the suit, the 1<sup>st</sup> to 4<sup>th</sup> Defendants filed a replying affidavit sworn by the 1<sup>st</sup> Defendant. He avers that the suit property was to be sold pursuant to orders issued in High Court Divorce Case No. 6 of 1997, on 5<sup>th</sup> November 2024 in execution of a Court of Appeal judgement issued in Civil Appeal No. 139 of 2010, which overrides the terms of the purported Lease herein. He contends that this court lacks jurisdiction to interfere with the said execution and further avers that the Plaintiff should have sought for joinder in Divorce Cause No. 6 of 1997 where the orders of sale of the suit property by a public auction were issued.
  6. She avers that the said auction was advertised by the 4<sup>th</sup> Defendant in advertisements carried on 30<sup>th</sup> December 2024 and 13<sup>th</sup> January 2025 respectively in the Daily Nation Newspaper, thus the Plaintiff had a right to bid like any other member of the public. He confirms that the suit property was sold to the 5<sup>th</sup> Defendant being the highest bidder thus the Plaintiff has no better legal interest than the interest of the purchasers to warrant issuance of the orders sought. Further, that the Plaintiff is free to negotiate another tenancy agreement with the new owner. He contends that the Lease in contention is a sham document created to mislead the court and has no legal effect, as it is not registered as required under Section 43 (2) of the *Land Registration Act*.
  7. The application was canvassed by way of written submissions.

### **Submissions**

8. In her submissions, the Plaintiff reiterated her averments in support of her application and submitted that she had met the threshold for grant of injunctions as stated in the case of *Giella v Cassman Brown*



and Company Ltd [1973] E.A. She pointed out that she had established a prima facie case by virtue of being a Lessee and being in occupation of the suit property. She also submitted that pursuant to Section 36 of the [Land Registration Act](#), failure to register a lease does not render it invalid. She urged the court to confirm the status quo orders issued on 1<sup>st</sup> April 2025.

9. In his submissions, the 2<sup>nd</sup> Defendant submits that the Plaintiff meets the threshold for grant of injunctions as she was unfairly deprived of her property yet she had pre-emptive rights, which were extinguished by the auction of the suit property. Further, that permitting the 5<sup>th</sup> Defendant to remain in possession, while their title is under challenge and evicting the Plaintiff who has enforceable contractual rights would cause her irreparable harm.
10. In their submissions, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants submit that an auctioneer is an agent of the Court and since the suit property was sold pursuant to an order of the court, it was legally sold in accordance with the law. They argued that the instant application is res-judicata Divorce Cause No. 6 of 1997 and Civil Appeal No. 39 of 2019, insisting that the 2<sup>nd</sup> Defendant who was a party in the said suits is a landlord and the Plaintiff's rights as a tenant flow from him. Further, that the Plaintiff has no legal interest in the suit property capable of protection from this court, as there is no prima facie case as defined in the case of *Mrao v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR and that the Plaintiff failed to demonstrate the principles for grant of injunctions as set in the case of *Giella v Cassman Brown* (supra). To support their averments, they relied on the following decisions: *Makatiat Limited v Liquidation Agent Trade Bank Ltd (in Liquidation) & 2 Others* [2019] eKLR; *John Florence Maritime Services Limited & Another vs Cabinet Secretary Transport & Infrastructure & 3 Others* (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment).

### **Analysis and Determination**

11. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether an interlocutory injunction should issue restraining the Defendants from the suit property pending outcome of suit and if the proceeds of the auction should be deposited in Court.
12. In relying on the principles established in the case of *Giella v Cassman Brown and Company Ltd* [1973] E.A and definition of the prima facie case as contained in *Mrao v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, I will proceed to analyse if the Plaintiff is entitled to the orders as sought.
13. The Plaintiff has sought for an interlocutory injunction contending that she was a Lessee on the suit property, which was sold by public auction and she had preemptive rights and should have been given the first right of purchase. The 2<sup>nd</sup> Defendant supports the Plaintiff's claim, while the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants oppose the instant application and insist that the suit property has already been sold to the 5<sup>th</sup> Defendant, who now has proprietary rights over it. The Plaintiff claims she has a Lease but admits the same was not registered.
14. The Plaintiff has not denied that the suit land was sold pursuant to orders in High Court Divorce Case No. 6 of 1997, on 5<sup>th</sup> November 2024 in execution of a Court of Appeal judgement issued in Civil Appeal No. 139 of 2010. The Plaintiff contends that she had a Lease but I note there were already orders issued by courts of competent jurisdiction for its auction, which took place and the suit property passed to a third party. I note the suit property was advertised twice for sale in the Daily Nation Newspaper but the Plaintiff has not explained why she did not purchase it, during the said auction. Further, it is trite that auctioning of property is governed by the Auctioneers Rules and once property is sold by public auction, the only remedy an owner or a person who has an interest in it has, is to sue for damages if the auction was not properly undertaken. It is my considered view that since



the suit property was to be sold pursuant to orders issued in High Court Divorce Case No. 6 of 1997, on 5<sup>th</sup> November 2024 in execution of a Court of Appeal judgment issued in Civil Appeal No. 139 of 2010, this overrides the terms of the purported Lease, which the Plaintiff seeks to rely on.

15. In the circumstances, I find that the Plaintiff has not established a prima case to warrant the orders of interlocutory injunction as sought.
16. On the prayer for deposit of proceeds to a joint interest earning, which I note amounts to seeking a mandatory injunction. The Court of Appeal in *Nation Media Group & 2 others v John Harun Mwau* [2014] eKLR held that:

“It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrate as we have stated a temporary mandatory injunction can only be granted in exceptional and in the clearest of cases.”
17. From the averments by the Plaintiff, except for being a Lessee of a property, which was sold as a result of a Court Order, I find that she has not presented special circumstances to warrant the orders of a mandatory injunction as sought and will decline to grant them.
18. Further, in relying on the parameters as provided in *Nguruman Ltd. Vs. Jan Bonde Nielsen* (2014) eKLR, where the Court of Appeal held that where a party fails to establish a prima facie case, then irreparable injury and balance of convenience need no consideration, I will decline to deal with the other two limbs on injunction.
19. In the circumstances, I find the Notice of Motion application dated the 24<sup>th</sup> February 2025 unmerited and will disallow it.
20. Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF JUNE 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Jaoko for Plaintiff

Mwangi Muchiri for Defendant

Court Assistant: Joan

