



**Mbondenyi v ABSA Bank Kenya Limited & another (Commercial Case E623 of 2024)
[2025] KEHC 13625 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E623 OF 2024
MN MWANGI, J
SEPTEMBER 26, 2025**

BETWEEN

MORRIS KIWINDA MBONDENYI PLAINTIFF

AND

ABSA BANK KENYA LIMITED 1ST DEFENDANT

MUGANDA WASULWA T/A KEYSIAN AUCTIONEERS 2ND DEFENDANT

RULING

1. The plaintiff/applicant filed a Notice of Motion application dated 17th October 2024 pursuant to the provisions of Order 40 Rules 1, 2(2), 3, 4, 8 and 10 of the Civil Procedure Rules, Sections 1A, 1B & 3A of the *Civil Procedure Act* and all other enabling provisions of the law. The plaintiff seeks an order of temporary injunction restraining the defendants, their agents or assigns, from selling, transferring, alienating, or otherwise interfering with the property known as LR No. Ngong/Ngong/38427, including exercising its statutory power of sale under the Notice dated 10th September 2024, pending the hearing and determination of this suit. He also prays for an order directing the 1st defendant to lift the plaintiff's listing with the Credit Reference Bureau (CRB) to enable the plaintiff to secure a loan takeover from another financial institution.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on 15th October 2024 by Mr. Morris Kiwinda Mbondenyi, the plaintiff herein. He averred that he is a co-owner of L.R. No. Ngong/Ngong/38427, charged to the 1st defendant to secure a loan of Kshs.13,000,000/= advanced to him by the 1st defendant on 19th June 2019. That the said loan was to be repaid in 156 equal monthly instalments of Kshs.150,000/=. He stated that due to the COVID-19 Pandemic, he has experienced financial difficulties but continued repaying the loan. Mr. Mbondenyi deposed that in response to demands from the 1st defendant in late 2022 and early 2023, he paid the



- 1st defendant Kshs.3,000,000/=, and proposed to reduce the monthly instalments to Kshs.100,000/=, and the loan was restructured vide a letter dated 27th July 2023.
3. Mr. Mbondenyei averred that despite continued repayments of over Kshs.11,591,475.00, the 1st defendant instructed the 2nd defendant to issue him with a Notice of sale of the suit property dated 10th September 2024. He contended that the said Notice was issued prematurely since the 1st defendant has never issued him with a Statutory notice of sale and the loan is performing, with a current balance of Kshs.8,753,527.15, and has over 7 years left to reach maturity. In addition, he stated that the forced sale value of Kshs.16,875,000/= indicated in the Notice is significantly below the suit property's 2023 valuation which was established to be Kshs.19,900,000/=. Mr. Mbondenyei contended that the current market value of the suit property is estimated to be over Kshs.30,000,000/=. He challenged their listing with the Credit Reference Bureau which has blocked their efforts to secure a loan takeover from another financial institution and expressed willingness to settle arrears and continue servicing the loan, having paid Kshs.400,000/= within a period of 45 days.
 4. In opposition to the application, the defendants' filed a replying affidavit sworn on 8th November 2024 by Mr. Samuel Njuguna, the 1st defendant's Recoveries Manager in the Corporate Recoveries Department. Mr. Njuguna expressed the opinion that the plaintiff's suit is incompetent and fatally defective since he is a joint proprietor of the suit property and cannot bring the suit without the consent or joinder of the co-owner, Ms Judith Mbala Maganga. He confirmed that the plaintiff was granted a loan facility of Kshs.13,000,000/= in May 2019 by the 1st defendant, secured by a charge over the suit property, jointly owned by the plaintiff and his wife. That the said loan was to be repaid in 180 equal monthly instalments of Kshs.151,865.00 inclusive of interest and the plaintiff authorized monthly deductions from his account.
 5. Mr. Njuguna averred that despite the plaintiff's claims, he defaulted on loan repayments and that the loan account has even reflected inconsistent payments, particularly zero payments between August and October 2023, causing interest and penalties to accrue. He further averred that the 1st defendant has issued the plaintiff with all the requisite Statutory Notices under the law via registered post to the chargor's postal address and also via email, including a 14-day demand letter on 13th December 2022, a 90-days' Statutory notice on 16th January 2023, a 40-days' notice to sell on 8th March 2024 and a 45-days' redemption notice and notification of sale issued by the 2nd defendant via WhatsApp.
 6. Mr. Njuguna stated that the plaintiff acknowledged receipt of these Notices and even responded vide a letter dated 7th February 2023 with a proposal, leading to loan restructuring that was communicated to the plaintiff vide a letter dated 24th July 2023. He stated that the plaintiff defaulted again prompting foreclosure action. He deposed that the 1st defendant commissioned a current Valuation Report dated 9th August 2024, in line with the law. He contended that the reduction in the forced sale value is attributed to market fluctuations and a professional re-assessment. Mr. Njuguna stated that the plaintiff's assertion that the suit property is matrimonial property does not negate the 1st defendant's legal right to sell the charged property upon default. He maintained that the 1st defendant's statutory power of sale was lawfully triggered due to persistent default and all the steps taken complied with the facility letter, the charge, and legal requirements.
 7. In a rejoinder, the plaintiff filed a supplementary affidavit sworn on 9th December 2024 by Morris Kiwinda Mbondenyei, the plaintiff herein. He averred that he is a joint proprietor of the suit property, and that he filed this suit with the co-owner's knowledge, and as such, this suit is properly before Court. He stated that Order 1 Rules 9 & 10 of the Civil Procedure Rules, 2010, allow for proceedings to continue despite misjoinder or non-joinder of parties. Mr. Mbondenyei averred that after the COVID-19 Pandemic related financial struggles, he made serious and consistent repayments



- including Kshs.5,001,071.65 between January 2023 and October 2024, equivalent to approximately 33 instalments, exceeding their monthly obligation. He further averred that Kshs.11,591,475.20 has been repaid in over 64 months, which is Kshs.1,872,115.20 more than the cumulative instalments expected under the original terms.
8. Mr. Mbondenzi denied being in default and stated that the 1st defendant has manipulated loan account entries to falsely create arrears and justify unlawful recovery actions. He challenged the listing with the Credit Reference Bureau as malicious, given that the loan advanced to them was actively performing. He further stated that the said listing has blocked him from securing a loan buyout from alternative lenders. Mr. Mbondenzi acknowledged receipt of the Statutory Notice issued to him on 16th January 2023 but contended that it was rendered obsolete after the loan was restructured in July 2023, creating a new Agreement. In addition, that since the restructuring of the loan, no fresh Statutory Notices have been served, making any reliance on earlier Notices unlawful.
 9. Mr. Mbondenzi disputed the validity of the 9th August 2024 Valuation Report, claiming that no Valuer visited the suit property as confirmed by his CCTV footage. He averred that the said Valuation Report is a fabricated document as it has several errors including incorrect property location indicated as "Asmara Close" instead of "Algiers Close" and has no official seal. He also averred that the suit property is his matrimonial home, hence he faces irreparable harm in the event that it is sold. He urged the Court to exercise equitable discretion as he has shown good faith and substantial effort to settle the loan.
 10. The instant application was canvassed by way of written submissions. The plaintiff's submissions were filed by the law firm of Mwangi Wahome & Company Advocates on 13th December 2024, whereas the defendants' submissions were filed on 19th December 2024 by K. Mwaura & Company Advocates.
 11. Mr. Ambani, learned Counsel for the plaintiff cited the provisions of Order 1 Rules 9 & 10(2) of the Civil Procedure Rules and the case of Republic Ex Parte the Minister for Finance & The Commissioner of Insurance as Licensing and Regulating Officers v Charles Lutta Kasamani T/A Kasamani & Co. Advocate & another Civil Appeal (Application) No. Nai. 281 of 2005, and submitted that failure to join Ms Judith Mbala Maganga in the case herein, a co-chargor, is not fatal to this suit and does not affect the core issues raised. He relied on the case of Bevaj Furniture Limited v Gulf African Bank Limited (Civil Case E899 of 2021) [2022] KEHC 9942 (KLR) and contended that after a demand for Kshs.13,318,396.05 and issuance of the January 2023 Statutory notice, the plaintiff made a payment of Kshs.3,000,000/= and subsequently entered into a loan restructuring agreement on 27th July 2023.
 12. Counsel argued that the aforesaid restructuring substantially altered the loan terms, rendering the Statutory Notice issued in January 2023 invalid. He asserted that as at 14th October 2024, the loan was not in arrears, with the outstanding balance reduced to Kshs.8,753,527.15, thus justifying the need for a fresh Statutory notice if any default had occurred thereafter. Mr. Ambani submitted that between July 2019 & October 2024, the plaintiff was to repay a maximum of Kshs.9,719,360.00 based on the agreed monthly instalment of Kshs.151,865.00. He stated that the plaintiff has repaid a total of Kshs.11,591,475.20, thus exceeding the expected amount by Kshs.1,872,115.20, demonstrates overpayment, leaving only Kshs.1,408,524.80 of the principal unpaid. Counsel contended that he has remedied any default hence listing the loan with the CRB as non-performing is unwarranted, as the loan is actively and substantially serviced.
 13. Mr. Ambani cited the case of Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR and submitted that in view of the fact that the Valuation Report relied upon for the sale of the property in issue is improper and contested the plaintiff has established a prima facie case to warrant being granted an order of temporary injunction. He further submitted that disallowing the instant application would result in the sale of the plaintiff's family home which is valued at over Kshs.22,000,000/=,



causing undue hardship. Counsel asserted that the balance of convenience tilts in favour of granting an injunction to prevent greater harm to the plaintiff and his family.

14. He stated that the loan is performing hence there was no justification for listing it with the CRB. He contended that the CRB listing has unfairly blocked the plaintiff's ability to secure alternative financing to repay the loan in full and urged this Court to lift the listing and allow the plaintiff to offset the balance through new financing as this would serve the interests of justice.
15. Mr. Pere, learned Counsel for the defendants submitted that this suit is fatally defective due to the plaintiff's failure to join his co-proprietor, Ms Judith Mbala Maganga. He argued that joint proprietors hold indivisible rights thus any action affecting a jointly owned property must involve both parties. In urging the Court to strike out this suit for lack of proper constitution, Counsel referred to the case of Maria Rosita Cardozo (Suing through her appointed Agent Masai Mara Sopa Lodge Limited v Robert Kibagendi Otachi & another [2017] eKLR. He asserted that although Order 1 Rule 9 of the Civil Procedure Rules, 2010, allows suits to proceed despite misjoinder or non-joinder, but the exclusion of a necessary party crucial to the core issues such as is the case herein, is a substantive defect not just a procedural irregularity.
16. Mr. Pere stated that the plaintiff's loan was restructured on 7th February 2023 setting monthly payments at Kshs.150,000/= over a period of 97 months and preserving previous contractual and Statutory rights, but the plaintiff defaulted on the new terms. Counsel relied on the case of Nyando Enterprises Limited v Barclays Bank Kenya Limited [2018] eKLR and further stated that the restructuring was a concession not a waiver of prior defaults or Statutory Notices, thus the 90-day Statutory Notice issued on 16th January 2023 remained valid. He submitted that due to continued non-compliance, the 1st defendant lawfully issued a 40-day redemption notice on 8th March 2023. Counsel contended that between 15th August 2023 & 27th March 2024, the plaintiff made only one payment, prompting the 1st defendant to issue a 40-day redemption notice on 8th March 2024.
17. Mr. Pere further contended that as at 14th August 2024, the plaintiff remained in arrears of Kshs.805,831.00. He asserted that this pattern of default despite loan restructuring, has led to account inconsistencies and failure to meaningfully reduce the loan balance. He cited the CBK Prudential Guidelines (2013) and contended that in view of the above, the plaintiff's loan qualifies as non-performing due to over 90 days of non-payment, justifying Statutory Notices and enforcement action. It was submitted by Counsel that the plaintiff is in chronic default, and that the 1st defendant issued all Statutory Notices and a valid property valuation was conducted on 9th August 2024. He cited the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR and contended that the plaintiff has not established a prima facie case, with a probability of success to warrant being granted of the orders being sought herein.
18. Mr. Pere submitted that the plaintiff stands to suffer no harm in the event that the instant application is disallowed as any loss is quantifiable and compensable by damages. He stated that the 1st defendant faces irreparable harm due to prolonged non-payment, which threatens its financial stability and the ability to recover the debt. He asserted that the balance of convenience tilts in favour of the defendants, who acted within their legal rights and would suffer greater prejudice if an order for injunction is granted. Mr. Pere contended that the plaintiff's continued default justifies the listing under CRB Regulations, and lifting it would undermine the defendants' right to protect their financial interests.



Analysis And Determination.

19. Upon consideration of the instant application, the grounds on its face and the affidavits filed in support thereof, the replying affidavit by the defendants and the written submissions by Counsel for the parties, the issues that arise for determination are –
- i. Whether this suit is fatally defective for non-joinder of the plaintiff's co-chargor;
 - ii. Whether the plaintiff is entitled to the injunctive reliefs sought in the application herein; and
 - iii. Whether the listing of the plaintiff with the CRB should be lifted.

Whether this suit is fatally defective for non-joinder of the plaintiff's co-chargor.

20. The defendants contended that the plaintiff's suit is incompetent and fatally defective since he is a joint proprietor of the suit property and cannot institute proceedings without the participation or consent of the co-owner, Judith Mbala Maganga. They asserted that joint proprietors hold indivisible interests in the property, thus any action affecting the jointly owned property must involve both parties. The plaintiff on the other hand relied on the provisions of Order 1 Rules 9 & 10(2) of the Civil Procedure Rules and submitted that the plaintiff's failure to join his co-chargor, Judith Mbala Maganga to this suit is not fatal and does not go to the substance of the suit. The defendants however asserted that while Order 1 Rule 9 of the Civil Procedure Rules permits suits to proceed despite misjoinder or non-joinder, the absence of a necessary party whose presence is critical to the central issues of the case such as in this instance, constitutes a substantive defect rather than a mere procedural irregularity.
21. It is not in contest that the plaintiff is both a co-owner and co-chargor of all that property known as LR No. NGONG/NGONG/38427, which is the subject of this suit. As such, in order for this Court to determine the dispute between the parties herein, the plaintiff's co-owner and co-chargor, Ms Judith Mbala Maganga, ought to be joined in these proceedings as a co-plaintiff. This Court is however also alive to the provisions of Order 1 Rule 9 of the Civil Procedure Rules which states that –

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

22. Further, under Order 1 Rule 10(2) of the Civil Procedure Rules, this Court has the discretion at any stage of the proceedings and either suo moto or upon the application of a party, to order the removal of any party who has been improperly joined to the suit as a plaintiff or a defendant. Further, the Court may direct that any person who ought to have been joined to a suit as a plaintiff, a defendant or whose presence is necessary for the Court to effectively and fully resolve all the issues in the matter, be added as a party on such terms as it deems just.
23. The Court in the case of *Zephir Holdings Limited v Mimosa Plantations Limited, Jeremiah Matagaro & Ezekiel Misango Mutisya* [2014] KEHC 1981 (KLR), in addressing the question of whether non-joinder of parties can defeat a suit held that -

A proper party is one who is impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 rule 1 and 2 respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. And the court has a wide discretion to even order suo moto for a party to be impleaded whose presence may be necessary to enable the Court effectually



and completely adjudicate upon and settle all questions involved in the suit. Accordingly, a suit cannot be defeated for mis-joinder or non-joinder of parties.

24. Based on the applicable law, I am not persuaded that this suit can be defeated and/or rendered fatally defective on account of the plaintiff's failure to join his co-chargor, Ms Judith Mbala Maganga to this suit. This is because she can always be joined to this suit in the manner provided for under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010.

Whether the plaintiff is entitled to the injunctive reliefs sought in the application herein.

25. The law governing the granting of interlocutory injunctions is set out under Order 40(1)(a) and (b) of the Civil Procedure Rules, 2010 which provides 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.
26. The conditions to be considered when dealing with an application for temporary injunction were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* [1973] EA 358, where the Court held as hereunder -

Firstly, 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 the balance of convenience.

27. It is not disputed that the 1st defendant granted the plaintiff a loan facility of Kshs.13,000,000/=, which was secured by a charge over the suit property in favour of the 1st defendant. According to the pleadings filed, the loan was to be repaid through 156 equal monthly instalments of Kshs.150,000/=. It is also not in dispute that the plaintiff defaulted on his repayment obligations. As a result, the 1st defendant issued the plaintiff with a 14-days' demand letter on 13th December 2022 to both the plaintiff and his co-chargor, seeking repayment of the outstanding loan amount of Kshs.13,318,396.05. Upon expiry of the 14-days' Notice without any payment being made, the 1st defendant issued the plaintiff with a 90-days' Statutory notice on 16th January 2023, demanding payment of Kshs.13,318,396.05.
28. A review of the plaintiff's written submissions reveals that the plaintiff does not dispute having received the 90-days' Statutory notice. The plaintiff even acknowledges that in an effort to remedy the default, he deposited Kshs.3,000,000/= with the 1st defendant on 7th February 2023. Vide a letter dated the same day, he requested the 1st defendant for a loan restructuring. In response to the plaintiff's request, the 1st defendant agreed to the restructuring as communicated in its letter dated 27th July 2023. Although the restructuring introduced a new repayment amount and revised the loan tenure, it expressly maintained that all other terms of the Agreement remained in force, including the right to recall the entire loan



in the event of default. Nevertheless, the plaintiff failed to honour the restructured repayment terms, prompting the 1st defendant to issue the plaintiff with a 40-days' Notice to sell on 8th March 2024, and demanded Kshs.9,182,038.08, being the amount outstanding as at 27th February 2024.

29. The 1st defendant has properly demonstrated that upon the expiry of the 40-days' Notice without the plaintiff having remedied the default, it proceeded to instruct the 2nd defendant to issue a 45-days' redemption notice and notification of sale, in a bid to recover the outstanding loan balance of Kshs.9,052,237.75. A review of the annexures attached to the 1st defendant's replying affidavit reveals that all demand letters and Statutory Notices were served upon the plaintiff and his co-chargor, Ms Judith Mbala Maganga, through registered post. The plaintiff has however neither claimed nor demonstrated that the addresses used for service were incorrect or did not belong to him or the co-chargor.
30. Instead, the plaintiff challenges the validity of the Notices on grounds that following the issuance of the 90-days' Statutory notice dated 16th January 2023, the loan was restructured by a letter dated 27th July 2023, which introduced fundamental changes to the loan agreement. As a result, the plaintiff asserted that the earlier Statutory Notice was rendered invalid and the 1st defendant cannot rely on it to enforce its rights, including the exercise of its statutory power of sale over the suit property.
31. A review of the plaintiff's affidavits filed in support of the instant application reveals a consistent position being that the plaintiff does not deny being indebted to the 1st defendant. At one point, the plaintiff asserted that the loan was performing, with an outstanding balance of Kshs.8,753,527.15 and a remaining repayment period of over seven years. Furthermore, one of the key reliefs sought by the plaintiff in this suit is an order compelling the 1st defendant to lift his listing with the Credit Reference Bureau (CRB), to enable him to secure alternative financing from another financial institution.
32. A perusal of the plaintiff's loan statements attached to both his supporting affidavit and the defendant's replying affidavit reveals that despite the loan having been restructured to assist the plaintiff in meeting his repayment obligations, the plaintiff continued to default consistently. Notably, between July 2023 and March 2024 when the 40-days' Notice to sell was issued, the plaintiff made only sporadic payments: Kshs.50,000/= in July 2023, Kshs.150,000/= in August 2023, Kshs.150,000/= in February 2024 and Kshs.130,000/= on 28th March 2024, with the latter coming after the issuance of the Notice to sell.
33. Having considered the said facts, I am inclined to agree with the 1st defendant that the plaintiff's default in meeting his loan repayment obligations continued even after the loan was restructured, meaning that the plaintiff did not rectify the default. That being the case, the 1st defendant was well within its rights under the charge instrument and the Land Act to pursue recovery of the outstanding loan without the necessity of issuing fresh Statutory Notices. To this end, I am bound by the Court of Appeal decision in the case of Euro Bank Limited (In Liquidation) v Twictor Investments Limited & 2 others [2020] eKLR, where it was held as hereunder –

From the record it is clear that after receiving the notice giving (whether it was for the 14 days or 90 days), the advocates on record for the mortgagor engaged counsel for the Bank with proposals on how to liquidate the loan. They did not complain at all that the notice they had been given was invalid. They actually acted on it. Following the discussions, the auctioneers were advised to hold any advertisement for the sale of the suit property. That was in November 1998. The property was not re-advertised until April 2001. The question we should be asking, in our view is whether in these circumstances, it was necessary to re-



issue another Statutory notice. The answer to this is in the negative as the default in payment had continued for more than 3 months following the notice in view of Section 69A(1) (a).

34. Just as in the aforementioned case, the plaintiff in this case did not dispute the 90-days' Statutory notice issued by the 1st defendant on grounds of any defect or impropriety. In light of this, I am satisfied that the plaintiff remains indebted to the 1st defendant and that the 1st defendant latter fulfilled all legal and contractual obligations regarding the issuance of Statutory Notices under the charge instrument and the *Land Act*.
35. On the issue of valuation of the suit property, the 1st defendant maintains that it commissioned a valuation of the suit property, resulting in a Report dated 9th August 2024 by ARK Consultants Limited. The plaintiff however contested the validity of the said Report, arguing that the indicated forced sale value of Kshs.16,875,000/= is significantly lower than the 2023 valuation of Kshs.19,900,000/=. He further asserted that no Valuer physically inspected the property, a claim he supports with CCTV footage. Additionally, he points to various inconsistencies in the Report, such as the incorrect location being listed as "Asmara Close" instead of "Algiers Close," and the absence of an official seal, all of which, according to the plaintiff, render the Valuation Report a fabricated document.
36. This Court however notes that other than disputing the 1st defendant's valuation of the suit property, the plaintiff has not provided an alternative Valuation Report from an independent Valuer for the Court's consideration. This Court finds that without a comparative Report, it is unable to assess the lack of credibility or accuracy of the valuation relied upon by the 1st defendant.
37. That said, this Court acknowledges that the plaintiff is indeed indebted to the 1st defendant, and the latter has complied with all preconditions necessary to exercise its statutory power of sale over the suit property, specifically, the issuance of the requisite Statutory Notices. Therefore, should it later emerge at the hearing of the main case that the suit property was sold at a price below its market or forced sale value, the plaintiff would be entitled to appropriate compensation by way of damages, as provided for under Section 99(4) of the *Land Act*.
38. This Court finds that the plaintiffs have not established a prima facie case with a probability of success to warrant being granted the orders being sought herein.
39. It is now well settled that once a property is offered as security for a loan, it effectively becomes a commodity available for sale in the event of default. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2013] eKLR, the Court of Appeal upheld the High Court's position that damages would be an adequate remedy therein, since the charged property had been transformed into a saleable asset upon being used as security. In light of the said decision, and considering that the value of the suit property in issue is readily ascertainable through the Valuation Reports relied on by the 1st defendant herein, this Court finds that the 1st defendant, as a financial institution, would be capable of compensating the plaintiff by way of damages in the event that this suit is determined in his favour.
40. In the circumstances, I am not persuaded that the plaintiff stands to suffer irreparable damage that cannot be adequately compensated by an award of damages in the event that the instant application is not allowed.
41. In the end, it is my finding that the balance of convenience tilts in favour of the defendants since the plaintiff can always be compensated by an award of damages in the event that this suit is successful.



Whether the listing of the plaintiff with the Credit Reference Bureau should be lifted.

42. As a lender, the 1st defendant is lawfully entitled to report the plaintiff's default to the Credit Reference Bureau in accordance with the applicable Credit Reference Bureau Regulations. Therefore, given this Court's finding that the plaintiff defaulted on his loan repayment obligations and remains indebted to the 1st defendant, there exists no valid basis for this Court to grant an order directing the removal of the plaintiff's listing with the Credit Reference Bureau. This Court concurs with the 1st defendant's position that lifting the Credit Reference Bureau listing would unjustifiably impair the 1st defendant's legitimate right to safeguard its financial interests.
43. The upshot is that the plaintiff's application dated 17th October 2024 is bereft of merits. It is hereby dismissed with costs to the defendants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Ambani for the plaintiff/applicant

Mr. Pere for the defendants/respondents

Ms B. Wokabi – Court Assistant.

