



Kinoti v Capital Sacco Society Limited & another (Civil Appeal E345 of 2024) [2025] KEHC 14037 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E345 OF 2024
HM NYAGA, J
OCTOBER 8, 2025**

BETWEEN

ROBERT KINYUA KINOTI APPELLANT

AND

CAPITAL SACCO SOCIETY LIMITED 1ST RESPONDENT

VIEWLINE AUCTIONEERS 2ND RESPONDENT

RULING

1. By an application dated 4th February, 2025 brought under Sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#), Order 22 Rules 25 & 52 of the [Civil Procedure Rules](#), Sections 6 & 12 (5) of the [Matrimonial Property Act](#) Cap 49, Section 93 of the [Land Registration Act](#), Section 79(3) of the [Land Act](#) and Article 99 of the [constitution](#), the Applicant seeks for orders: -
 1. Spent.
 2. Spent.
 3. That an order of injunction do issue barring the Defendants/Respondents jointly and severally either by themselves, agents or servants and anybody or authority howsoever claiming through them from selling by way of public auction, private treaty or any manner disposing, transferring or in any manner dealing with property known as L.R No. Kirimara/Kithithina Block 1/383 registered in the name of the Applicant pending the hearing and determination of this application and the main suit interpartes.
 4. That the Honourable Court be pleased to grant any other or better order/relief as shall meet the ends of justice.
 5. That costs of the application be provided for.



2. The Application is premised on the grounds on its face and supported by an affidavit of the Applicant, Robert Kinyua Kinoti, sworn on the same date.
3. He asserted that he is the registered proprietor of L.R. No. Kirimara/Kithithina Block 1/383 where he has set up his home and resides with his family and that he has also made significant improvements on the said land.
4. He deposed that in the year 2018, he obtained a financial facility from the 1st respondent which he secured using his salary and guarantors.
5. He further deposed that at the time of obtaining the said facility, he was serving as a nominated Member of the Meru County Assembly under the Jubilee Party and that one of his guarantors was the Assembly Speaker, Hon. Ayub Bundi.
6. He deposed that the facility was to be repaid within four months and that by the due date he had settled the amount leaving only a balance of Ksh. 590,000/=
7. He stated that in October 2022, he applied for another facility from the 1st respondent amounting to Ksh. 3,000,000/= using his title deed for L.R. No. Kirimara/Kithithina Block 1/383 as security since by then he was no longer serving as a nominated Member of the Meru County Assembly. However, the 1st respondent declined to disburse the funds for the reason that priority was given to current sitting members of the Meru County Assembly and that he would have to wait.
8. He averred that after making several follow-ups, he was issued Ksh. 80,000/=, which he was apprised was compensation for disturbances as he had suffered significant losses while seeking the loan facility intended to salvage his struggling dairy farming business.
9. He contended that since then, the 1st respondent has not communicated with him and his attempts to have his title deed released have been unsuccessful. He added that the 1st respondent later caused his name to be listed with the Credit Reference Bureau which has prevented him from managing his financial affairs and ultimately led to the complete collapse of his dairy farming business.
10. He asserted that at no point was the title deed in question ever used as security for the loan balance of Ksh. 590,000/=
11. He averred that in May 2024, a valuer appointed by the 1st respondent visited his parcel of land and apprised him that he had purportedly been advanced a sum of Ksh. 3,000,000/= by the 1st respondent which he had refused to repay.
12. He stated that he immediately proceeded to the 1st respondent's offices and explained that there had been a mistake as the parcel of land in question was not due for sale given that the sum of Ksh. 3,000,000/= which he had applied for and intended to secure using the said title deed had not been disbursed to him.
13. He further deposed that on 2nd July 2024, he saw newspaper cuttings affixed on the fence of his parcel of land indicating that it was scheduled for auction on 4th July 2024 outside KCB Bank, Embu Branch, in Embu County. Alarmed by this, he rushed to the 1st respondent's offices to establish why his property had been listed for sale. While there, he was informed that the 1st respondent would address his cash flow issues. He requested and obtained a loan statement relating to the previous facility he had borrowed and repaid leaving an outstanding balance of Ksh. 590,000/=. To his surprise, the statement indicated that the loan had been fully settled. However, the 1st respondent later provided another statement reflecting an outstanding loan of Ksh. 590,000/= plus interest which they claimed had been secured by the title deed for the subject property.



14. He contended that a cursory look at his title deed on the encumbrances section clearly shows that the charge was created to secure a facility of Ksh. 3,000,000/= and not Ksh. 590,000/= as alleged by the 1st respondent.
15. He asserted that he has never been served with any statutory notice, redemption notice, or notification of sale as required by law.
16. He averred that despite these glaring procedural omissions, the 1st respondent has proceeded to issue instructions to the 2nd respondent to auction the subject property.
17. He reiterated that if the orders sought are not granted, he will suffer irreparable loss and will be rendered homeless since the property in question is his only place of residence.
18. He thus prays that this application be allowed in the interest of justice.
19. In opposition to the application, Peninah Karimi, the Debt Recovery Manager of the 1st Respondent, swore a Replying Affidavit on 14th February 2025 wherein she averred that the Applicant is guilty of non-disclosure and has concealed several salient facts.
20. She deposed that the Applicant requested to charge his parcel of land, L.R. No. Kirimara/Kithithina Block 1/383 and that a charge dated 27th October 2022 was duly registered in favour of the 1st Respondent as confirmed by an official search from the Lands Registry showing an encumbrance in its favour.
21. She stated that following the registration of the charge, the Applicant received an initial sum of Ksh. 80,000/= and upon executing the loan application contemporaneously with the charge, was subsequently advanced Ksh. 590,000/= on 21st November 2022.
22. She asserted that upon the Applicant's default in repayment, the 1st Respondent served a demand notice under Section 90 of the Land Act and subsequently issued a notice of sale in accordance with Section 96(2) of the Act.
23. She further stated that thereafter, the Applicant was served with a redemption notice and similarly the auctioneer issued a notification of sale.
24. She contended that granting an injunction would result in the decretal sum escalating to astronomical figures given that the amount secured has remained unpaid.
25. She averred that the 1st Respondent is a banking and lending institution and the funds at stake belong to its customers as these are the resources it relies upon for its lending business.
26. She contended that the Applicant charged his land for ksh. 3,000,000/= but was advanced only Ksh. 590,000/=, explaining that this arrangement would enable the borrower to access additional funds in the future up to the maximum amount secured under the charge.
27. She averred that the 1st respondent is a financial institution with ability to compensate the Applicant in event of any loss incurred or any adverse orders being issued against it.
28. She deposed that the charge document is akin to a contract and the court cannot rewrite the same.
29. She asserted that the Applicant has failed to establish a prima facie case with any likelihood of success and that the application is an abuse of the court process.
30. She prayed that the Application be dismissed with costs.



31. The application was canvassed through written submissions. Only the Respondents filed their submissions.

Respondents' Submissions

32. Citing Section 76 of the *Cooperative Society Act*, the Respondents submitted that the trial court rightly held that it lacked jurisdiction to entertain the suit as the same falls within the ambit of the cooperative's tribunal. In support of this position, the respondents referred this court to annexure PK4 which shows the Applicant's membership number as 1253920 and the case of *Muthoni v Capital Sacco Limited; Viewline Auctioneers Limited (Interested Party)* (Commercial Case E001 of 2024) [2024] KEHC 1062 (KLR) (6 February 2024) (Ruling)
33. On whether the Applicant has established a prima facie case with a probability of success, the respondents submitted that the appellant had charged his aforesaid parcel of land for Ksh.3,000,000/= but was availed a cumulative sum of Ksh.670,000/= made up of Ksh.80,000/= advanced on 8th November,2022 and Ksh.590,000/= advanced on 21st November,2022.
34. The Respondents urged the court to take judicial notice that the Applicant took a loan in 2022 payable within 60 months but he has not paid a single cent to date.
35. The Respondents submitted that the dispute on the amount of loan repayable is not a ground for granting an injunction. In support of this position, respondents placed reliance on the case of *Transwestern Cane Harvesters Limited & Another V Barclays Bank Of (K) Limited* [2009] eKLR
36. The respondents submitted that the 1st respondent cannot be restrained from exercising its power of sale on flimsy grounds of the amount due in dispute and it can only be restrained if the Applicant deposits or pays the entire sum owing.
37. The Respondents submitted that the charge property is indeed not matrimonial home as envisaged by Section 79(3) of the *Land Act* as the same is agricultural land and there are no houses or a homestead located on the same. They further argued that even if the charged property is a matrimonial home, courts have held that the same will not be spared for auction as long as the said property secured a loan. To buttress their submissions, the respondents cited the cases of *Muthoni v Capital Sacco Limited; Viewline Auctioneers Limited (Interested Party)* (*supra*); *Elyjoy Kageni v Bank of Africa Kenya Limited & 3 others* [2017] eKLR; HCCA/E086/2024 *Hellen K. Muriungi Vs Henry Mwebia And Capital Sacco Society Limited & 2 Others*; *Maltex Commercial Supplies Limited & Another vs Euro Bank Limited* H.C.C.C. No.82 of 2006 quoted in the case of *Wilstone Mdingi Mwawugunga v Kenya Women Microfinance Bank Plc* [2022] KEHC 2696 (KLR); *Cieni Plains Company Limited & 2 others v Ecobank Kenya Limited* [2018] eKLR & Kajiado High Court no. E015 of 2021 *Ronaldo Ratemo Moturi & Another Vs. Credit Bank Ltd & another*.
38. On irreparable damage, the respondents submitted that the 1st Respondent is a reputable banking institution capable of paying any compensation and damages when need arises. In support of their submissions, reliance was placed on the cases of *Ronaldo Ratemo Moturi & Another Vs. Credit Bank Ltd & another* (*supra*) & *Anfakari Limited & 3 others v Fidelity Commercial Bank Ltd* [2022] eKLR.
39. They further argued that if the 1st Respondent will be restrained from selling the suit property there would be a risk of the debt soaring to astronomical figures and outstripping the value of the suit property. In support of this position, reliance was placed on the case of *Andrew Muriuki v Equity Building Society* [2005] eKLR



40. On balance of convenience, the Respondents submitted that the same tilts in favour of the 1st respondent since the loan has not been serviced at all. They urged the court to consider that the monies owing are public funds owned by the citizens and the court should safeguard those interests by ensuring that all the loans issued to customers are repaid in full and no injunctions are issued to stifle the banks trade. To bolster their submissions, the respondents relied on the cases of *Muthoni v Capital Sacco Limited*; *Viewline Auctioneers Limited (Interested Party)* (*supra*), *Wilstone Mdindi Mwawugunga v Kenya Women Microfinance Bank Plc* (*supra*) & *Cieni Plains Company Limited & 2 others v Ecobank Kenya Limited* (*supra*)

Analysis and Determination

41. After considering the Application, the respective affidavits and the submissions on record, two issues arise for determination. Namely;
- a. Whether the trial court had jurisdiction to determine the matter.
 - b. Whether the conditions for granting the injunctive orders have been met by the applicant.

Issue no.1

42. *Black's Law Dictionary*, 9th edition, defines jurisdiction as the court's power to entertain, hear and determine a dispute before it.

43. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lilian S" vs Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi, J.A. held as follows: -

“I think that is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its stools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

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44. A court's jurisdiction flows from either the *Constitution* or legislation or both. The Supreme Court of Kenya in the case of *Samuel Kamau Macharia vs KCB & 2 Others*, Civil Application No. 2 of 2011 stated thus: -

“A court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

45. Where a court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency, and objectivity injected into it, will be marooned in the intractable web of nullity. See *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 Others* [2023] KECA80 (KLR).



46. The respondents argued that the Applicant is a member of the 1st Respondent holding membership number 1253920 and that under Section 76 of the *Cooperative Societies Act* the matter falls within the jurisdiction of the Cooperative Tribunal, and therefore this Court has no jurisdiction to hear it.

47. Section 76 of the *Cooperative Societies Act* provides as follows;

“Disputes

- (1) If any dispute concerning the business of a co-operative society arises—
 - (a) among members, past members and persons claiming through members, past members and deceased members; or
 - (b) between members, past members or deceased members, and the society, its committee or any officer of the society; or
 - (c) between the society and any other co-operative society, it shall be referred to the Tribunal.
- (2) A dispute for the purpose of this section shall include—
 - (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
 - (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
 - (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.”

48. From the foregoing, it is clear that a dispute that falls under section 76 of the Act must be referred to the Tribunal.

49. It is not controverted that the Appellant is a member of the 1st Respondent under membership number 1253920. The dispute arises from a debt relating to monies advanced to the Appellant and allegedly unpaid. Under Section 76 of the *Cooperative Societies Act*, such disputes between a Sacco and its members concerning the business of the society fall within the exclusive jurisdiction of the Cooperative Tribunal.

50. In my view the trial court was right in finding that it lacked the jurisdiction to entertain the suit before it.

51. The High Court is not clothed with original jurisdiction in Co- operative Societies disputes, but can hear parties by way of appeals only as per section 81(1) of the *Co-operatives Act* which provides:

“Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court.”



52. Additionally, section 81(5) provides:

“The decision of the High Court on any appeal shall be final.”

53. Consequently, having gone to the wrong forum, this Court cannot entertain the matter. As I have stated, the dispute ought to have been referred to the Tribunal in the first instance.

Issue no.2

54. The applicable law for the granting of injunctions is found under the provisions of Order 40 Rule 1(a) of the *Civil Procedure Code*. The requirements for grant of injunctions as set-out in the *Giella vs Cassman Brown* [1973] EA 358 as follows:

“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 be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

55. The principles on which courts will grant an injunction were restated by the Court of Appeal in *Nguruman Limited V. Jan Bonde Nielsen & 2 Others*, CA No. 77 of 2012, together with the mode of their application as follows:

“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) ally any doubts as to (b) by showing that the balance of convenience is in his favour.

56. From the foregoing, 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. (See *Kenya Commercial Finance Co. Ltd V. Afraba Education Society* [2001] Vol. 1 EA 86).

57. The Court of Appeal in the case of *Mrao Ltd Vs First American Bank of Kenya and 2 others* [2003] eKLR interpreted the condition as to prima facie case as follows:

“A prima facie case in a civil application includes but is not confined to a "genuine and arguable case". It is a case which on the material presented to court; a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the other party as to call for an explanation or rebuttal from the latter.”

58. According to the Applicant, he obtained a financial facility from the 1st Respondent in 2018 secured by his salary and guarantors and substantially repaid it leaving a balance of Ksh. 590,000/= and that in October 2022 he applied for another loan of Ksh. 3,000,000/= using his parcel of land, L.R. No. Kirimara/Kithithina Block 1/383 as security. However, the 1st Respondent declined to disburse the said amount, citing priority for sitting members of the Meru County Assembly. He contended that he has never been served with any statutory notice, redemption notice or notification of sale as required by law.



59. The 1st respondent on their part assert that the Applicant voluntarily offered the said parcel as security and a charge dated 27th October 2022 was registered in its favour. It contended that the Applicant was initially advanced Ksh. 80,000/= and later Ksh. 590,000/= upon execution of the loan application. It was its position that the Applicant defaulted in repayment prompting the issuance of a statutory demand notice under Section 90 of the Land Act, followed by a notice of sale pursuant to Section 96(2) and subsequently a redemption notice and auctioneer's notification of sale.
60. It is trite he who alleges must prove. The Applicant failed to adduce any documentary evidence demonstrating that he applied for a loan in 2018 and substantially repaid the same. Further, none of his alleged guarantors, including the aforementioned County Assembly Speaker, swore an affidavit in support of his position.
61. The 1st respondent on its part rely on the following annexures:
- i. PK1- Charge dated 27 October 2022 over L.R. Kirimara/Kithithina Block 1/383 for Ksh 3,000,000/- executed by the Applicant in favour of the 1st Respondent.
 - ii. PK2- Official search confirming an encumbrance in favour of the 1st Respondent.
 - iii. PK3: Account statement showing Ksh 80,000/= advanced to the Applicant on 18.11.2022.
 - iv. PK5a: Account statement showing Ksh 590,000/= advanced to the Applicant on 21.11.2022.
 - v. PK7(a)-(b): Demand notice issued under Section 90 of the Land Act.
 - vi. PK8(a)-(b): Notice of sale issued under Section 96(2) of the Land Act.
 - vii. PK9(a)-(c): Redemption notice served.
 - viii. PK10(a)-(c): Confirmation of issuance of the redemption notice.
62. The Applicant did not file any further affidavit to controvert the Respondents' averments. The Court of Appeal case in Daniel Kibet Mutai & 9 Others vs Attorney General [2019] eKLR in dealing with unchallenged affidavit evidence held;
- “The position before us is that the appellants averred to certain facts under oath in an affidavit. These facts were not controverted by the respondents either through an affidavit in response or through cross examination. An affidavit is sworn evidence. It occupies a higher pedestal than grounds of opposition that are basically issues of law intended to be argued. Two things flow from this. First, by the mere fact of the affidavits not having been controverted, there is an assumption that what is averred in the affidavit as factual evidence is admitted.”
63. From the cited authority, it is evident that since the Applicant did not file a supplementary affidavit to rebut or clarify the issues raised in the replying affidavit, the 1st Respondent's averments therefore remain unchallenged.
64. In the circumstances therefore, I opine that the Applicant has not established a prima facie case with a probability of success.
65. The Applicant must demonstrate that he will suffer irreparable harm which cannot be adequately compensated by damages unless an Order of Injunction is granted.
66. The burden is on the applicant to demonstrate the nature and extent of the substantial injury likely to be suffered



67. The Court of Appeal in *Nguruman Limited* (supra), on what amounts to an irreparable injury held as follows held that: -

” An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

68. Equally, in the case of *Pius Kipchirchir Kogo versus Frank Kimeli Tenai* (2018) eKLR the court while defining what amounts to an irreparable injury held as follows;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

69. The Applicant contended that if injunction is not granted, he will suffer irreparable loss and will be rendered homeless since the property in question is his only place of residence.

70. In *Elijah Kipng'eno Arap Bii v Kenya Commercial Bank Limited* [2001] eKLR the court held as follows:

“Is the applicant’s probable injury capable of being adequately compensated in damages? I have no doubt that it is. The applicant has known all along that the securities he offered for his charge debt would be realized if default was made in the repayment. As I have said severally, once property is offered as security it by that very fact becomes a commodity for sale. And there is no commodity for sale whose loss cannot be compensated adequately in damages. So, although Mr Wandaba’s eloquence nearly induced in me tears of sympathy for the applicant, I am on a rational consideration of the matter impelled to conclude that the applicant’s loss is perfectly compensable by an award of damages and that the bank is capable of meeting any such award. The Application fails on this ground too.”

71. In *Kihara v Barclays Bank (K) Ltd* (2001) 2 EA 420, the Court rendered thus: -

“The mere fact that a borrower has a claim in damages against a lender which is equal to or in excess of the debt due does not at law entitle it to resist the lender’s attempt to exercise its statutory power of sale when this has properly arisen...As the Plaintiff had put up the property as security for the loan with full knowledge that should he default it would be sold, he had converted it into a commodity for sale and there was no commodity for sale the loss of which could not be adequately compensated in damages.”

72. The Applicant voluntarily charged the property with full knowledge that, in the event of default, it would be subject to sale. Furthermore, the Applicant has not produced any photographic evidence to establish that the matrimonial home is situated on the suit property, nor has any evidence been tendered to demonstrate that the 1st Respondent would be unable to compensate him for any loss that may arise.

73. In light of the above, I opine that the Applicant has not demonstrated that he will suffer irreparable loss which cannot adequately be compensated by an award of damages.



74. In *Amir Suleiman – Versus - Amboseli Resort Limited* [2004] eKLR the learned judge offered elaboration on what is meant by “balance of convenience” and stated; -

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

75. Given the above accounts, it will be a malicious attempt by the applicant to frustrate the 1st Respondent from recovering monies owed to it. In the circumstances, the balance of convenience tilts in favor of the Respondent recovering the outstanding principal amount.

76. The upshot of the foregoing is that the instant application lacks merit and it is hereby dismissed with costs.

77. Further, since the initial suit was filed in the wrong court, the learned magistrate was correct ruling that the court lacked jurisdiction.

78. Consequently, the appeal itself is hereby struck out with costs to the Respondents.

79. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER, 2025.

H. M. NYAGA,

JUDGE.

