Oduory & another v NCBA Bank Kenya Limited & another (Civil Suit E001 of 2025) [2025] KEHC 13841 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13841 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

CIVIL SUIT E001 OF 2025

WM MUSYOKA, J

OCTOBER 3, 2025

BETWEEN

GILBERT ONYANGO ODUORY .... 1ST PLAINTIFF

RESTER NAFULA ODUORY .... 2ND PLAINTIFF

AND

NCBA BANK KENYA LIMITED .... 1ST DEFENDANT

AUCKLAND AGENCIES AUCTIONEERS .... 2ND DEFENDANT

RULING

1. This matter was originally at the Busia Environment and Land Court. It was transferred to the High Court by Olao J, vide a ruling that was delivered herein on 20th March 2025, on grounds that the Environment and Land Court did not have jurisdiction over the dispute, principally on the grounds advanced in Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA).

2. The plaint, dated 13th November 2024, seeks 2 main orders, a permanent injunction, to restrain sale of Bukhayo/Mundika/11942, and an order for rendering of accounts. The plaintiff concedes having been advanced loan moneys by the 1st defendant, and offering Bukhayo/Mundika/11942 as collateral for that loan. That property was advertised for sale, by public auction, which sale was scheduled for 29th October 2024. That proposed sale prompted the filing of the suit.

3. I have already taken a position on these matters, that the High Court does not have a jurisdiction, in cases where there is an effort by a banker or lender to exercise its statutory power of sale, on the basis that the said power is granted under land legislation, which legislation declared the Environment and Land Court, and empowered subordinate courts, as the court for their purposes. That land legislation rides on Article 162(2) of the *Constitution*.

4. I am talking about the *Land Act*, Cap 280, Laws of Kenya, and the *Land Registration Act*, Cap 300, Laws of Kenya, and sections 2 and 150 of the former Act and sections 2 and 105 of the latter Act. These provisions are in plain terms or language, that the word "court," as used in them, refers to the courts with jurisdiction, with respect to the processes, actions and proceedings, the subject of the said statutes. The relevant courts are the Environment and Land Court and the empowered subordinate courts.

5. My understanding, from such decisions as Macharia & another vs. Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ), is that jurisdiction is conferred by the *Constitution* or statute, and what has not been conferred, by these 2, does not exist. A court can only exercise such power or authority as is conferred upon it by the *Constitution* and statute. Where there is no jurisdiction there would be no foundation for a court to conduct any proceedings. That would mean that if a trial court has no jurisdiction, over a matter it is trying, then the entire proceedings would be a nullity. See Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA) and Macharia & another vs. Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ).

6. The dispute herein is around exercise of a statutory power of sale, which is provided for under the *Land Act*. The *Land Act* also deals with rendering of accounts, as a way of avoiding exercise of the statutory power of sale, by way of the equity of redemption. The courts conferred with jurisdiction, by the *Land Act* and the *Land Registration Act*, are the Environment and Land Court and the empowered courts. Going by the pronouncement, in Macharia & another vs. Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ), those are the courts with jurisdiction, for statute has crafted that jurisdiction for them. The 2 statutes do not mention the High Court, as a court with jurisdiction, over suits around the processes provided for in them.

7. The *Land Act* provides for charges in Part VII, running from sections 78 to 106. Section 78 applies Part VII of the *Land Act* to all charges on land. Section 79 defines informal charges, while section 80 provides that a charge on land shall take effect as security only. Section 81 provides for order of priority of charges; while section 82 provides for tacking. Section 83 deals with consolidation of charges; while section 84 is on variation of charges. Section 85 states the right to discharge a charge, while section 86 provides for transfer of charges and section 87 is on the chargee's right to consent to transfer of charges. Section 88 states the implied covenant by the chargor.

8. Section 89 states the equity of redemption. Section 90 is on the remedies of a chargee, while section 91 is on the chargee's action for money secured by the charge. Section 92 is on the appointment, powers, remuneration and duties of a receiver under the charge. Sections 93 and 94 are about the powers of a chargee, with respect to the leasing and taking possession of the charged property. Section 95 states the position on withdrawal of a lender from possession. Sections 96, 97 and 98 are on the chargee's power of sale, the duty of a chargee exercising power of sale and powers incidental to power of sale. Section 99 protects a purchaser of charged land sold under power of sale. Section 100 provides for purchase of the charged land, by a charge. Section 101 is about how the proceeds of the sale are to be applied. Section 102 is on the right of a chargor to discharge the charge on payment of any sum due before sale.

9. Section 103 is on application for relief, by the chargor; and section 104 is on the powers of the court, in respect of the remedies and reliefs available to any applying chargor. Sections 105 and 106 are on the power of the court to re-open certain charges and to revise terms thereof, and the exercise of power by the courts with respect to that.

10. Sections 97, 100, 103, 104, 105 and 106 make specific references to "court," with respect to power of sell by order of "court;" a chargee being authorised by the "court" to purchase the charged land; applications to "court," by the chargor, for relief against the exercise of power by the chargee to realise the security; powers of the "court," with respect to the reliefs and remedies it may grant on such applications; powers of the "court" to re-open charges; and exercise of power by the "court" to re-open charges.

11. What is clear, from these provisions, is that charges on land, to secure borrowings, are provided for in the *Land Act*, and not in banking legislation. There is a definition of charges on land, how charges are to be created, the rights and duties of chargors and chargees, the remedies and reliefs available to the parties to charges, among others. Disputes and disagreements would, no doubt, arise over one aspect or other of the charges. Such disputes or disagreements would be over the matters that are the subject of sections 78 to 106 of the *Land Act*. The *Land Act* has identified the courts with jurisdiction to handle any such disputes and disagreements. The provisions, which do so, are in sections 2 and 150 of the *Land Act*.

12. Section 2 of the *Land Act* does so by defining or interpreting what the word "court," as used in the *Land Act*, should be understood to mean. Let me use the exact words in section 3 of the *Land Act*: ""Court" means the Environment and Land Court established under the *Environment and Land Court Act* (Cap. 8D)."

13. Section 150 states the courts, which have jurisdiction to hear and determine disputes and actions, arising from the processes provided for under the *Land Act*, which include the processes around charges on land, as stated in Part VII of the Act. The exact words of section 150 of the *Land Act* are:

> " 150. Jurisdiction of the Environment and Land Court the Environment and Land Court established in the *Environment and Land Court Act* (Cap. 8D) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."

14. It should follow, from the above provisions, that the court with jurisdiction, to handle any disputes around the charges, provided for and created under Part VII, sections 78 to 106, of the *Land Act*, or the processes around those charges, as set out in those provisions, is not the High Court, but the Environment and Land Court, as established in the *Environment and Land Court Act*, Cap. 8D, Laws of Kenya, and the subordinate courts as empowered by any written law. Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA), in my very humble view, contradicts the very clear provisions of the *Land Act*, on jurisdiction, over disputes around the exercise of the statutory power of sale, and imposes jurisdiction on the High Court, which the *Land Act* has expressly conferred on the Environment and Land Court and the empowered subordinate courts.

15. Most of the suits, which come to the courts with respect to charges, like the instant one, are at the instance of chargors, seeking to stop exercise of the statutory power of sale by the chargees, a right accruing to chargees under the *Land Act*. Some of such suits are anchored on the equity of redemption, which is a right accruing to chargors under the *Land Act*. The suits are not about accounts, but on whether the chargee is entitled to realise the charged land, to recover the moneys due, and on the equity of redemption, with respect to whether the chargor should be entitled to redeem the charged property. The issue of accounts is secondary, for it is raised, by the chargor, as a defence to the quest by the chargee

to exercise its power of sale, or as an excuse to delay the process of sale, or to find a basis for resisting the exercise of the statutory power of sale of the charged land.

16. What prompts or precipitates or provokes the suit, is not a desire by the chargor to get clarity on the amounts owing by him, but rather a reaction, by him, to the efforts by the chargee to realise the security. The suit, by the chargor, is not about the money, but the land, for it is filed to prevent disposal of the land, in exercise of the power of sale. The suit is filed only after the process of exercising the statutory power of sale commences in earnest, especially upon the mandatory statutory notices being served or the land being advertised for sale. Such suits are anchored on the charge, and not the loan or borrowing/ lending agreement. The suits are in exercise of the right, granted to a chargor, under section 103 of the *Land Act*, to seek reliefs, against the chargee, with respect to the charge, and not on the provisions of the *Banking Act*, Cap 488, Laws of Kenya, or any law on money lending, with respect to the lending contract. The *Banking Act*, and, indeed, any other money lending legislation, if any, does not carry any provisions on charges, and remedies and reliefs around them.

17. The "court," that is empowered by section 104 of the *Land Act*, to grant the reliefs and remedies set out in that provision, is not the High Court, but the courts stated in sections 2 and 150 of the *Land Act*, "the Environment and Land Court established in the *Environment and Land Court Act* (Cap. 8D) and the subordinate courts as empowered by any written law." So long as a suit is anchored on a charge and the provisions of the *Land Act*, it should be a no-go area for the High Court, for want of jurisdiction.

18. The situation would be different, with respect to suits filed by the chargee, against the chargor, for recovery of the moneys owed. Such a suit would not be subject to the *Land Act*, to the extent that it is not founded or anchored on the charge instrument, and, therefore, not seeking to enforce the charge. Such a suit should be filed at the High Court, and the Environment and Land Court would have no jurisdiction over it, for it would be seeking to recover a simple debt. However, should the suit be anchored on the charge, on the basis that it is filed under the *Land Act*, to secure the remedies accruing to a chargee, under section 90(3) of the *Land Act*, the High Court would have no jurisdiction, and the Environment and Land Court should be the court with jurisdiction, by dint of sections 5 and 150 of the *Land Act*.

19. It should be understood that, where a charge is created to secure a borrowing, 2 contracts would be at play. There would be the money lending contract, on one hand, and the agreement to secure the borrowing or lending with the charged land, on the other. The parties to the first contract need not be the same parties in the second contract. The second contract would only be of significance upon default, by the borrower, in the first contract. Where the terms of the first contract, specifically that on repayment of the moneys lent, are fulfilled, the second contract, the charge, would be discharged. However, where there is no fulfilment of the repayment terms in the first contract, then the lender, under the first contract, in his capacity as the chargee, under the second contract, would be entitled to enforce the terms of the second contract, by realising the security, being the charged land.

20. The first contract, on money lending or borrowing, would not be entered into in accordance with the *Land Act*, but either the *Banking Act* or any other law that governs borrowings and money lending. The second contract would not be regulated by the *Banking Act* or any law relating to borrowing and money lending, but the *Land Act* and the *Land Registration Act*, for that is the law on charges.

21. A lender, under the first contract, has the liberty, where default occurs, to merely sue for simple debt at the High Court, without reference to the charge instrument, that is without seeking to enforce the terms of the charge. That would mean proceeding on the basis of the first contract, on borrowing or money lending. The lender may also choose not to pursue his rights directly under the first contract, for he has a second option, to enforce the second contract, which gives him a statutory power of sale,

over the charged land, to recover his moneys. If he chooses the second option, of enforcing the charge, that act alone would take the matter out of the purview of the High Court, and any dispute, on the enforcement of the charge, or the exercise of the statutory power of sale, would have to be filed at the Environment and Land Court, or any empowered subordinate court, for those would be the courts with jurisdiction, by dint of sections 2 and 150 of the *Land Act* and sections 2 and 101 of the *Land Registration Act*.

22. A lender, who chooses to enforce the second contract, rather than the first contract, should be understood to have opted out of the remedies available under the first contract, the money lending agreement, being recovery of a simple debt, vide a suit at the High Court, and opts for the remedies available under the second contract, the charge, being, among others, exercise of the statutory power of sale, in respect of which any disputes would be within the exclusive purview of the Environment and Land Court, or any empowered subordinate court. A lender usually opts out of the remedies available under the first contract, of filing suit for simple debt, at the High Court, upon giving up on the possibility of the borrower ever repaying the amount due, either on account of the borrower being irredeemably impecunious or simply unwilling to pay, and opts for the remedies under the second contract, of enforcing the charge. Where the lender opts to exercise the statutory power of sale, he would not be seeking payment, from the borrower, of the moneys due, for he would have given up on him at this stage, but simply disposal, by sale, of the charged land.

23. Once a lender opts to pursue his rights under the charge, rather than filing suit in court for ordinary civil remedies, the dynamics would change, for focus would shift from the money to the charged land. The charge is created over or on land, and enforcement of the charge would involve some element of alienation of the land, which, in turn, would touch on title to the land. Once the focus shifts to the land and title, the jurisdiction of the High Court would be lost, bringing the matter within the jurisdiction of the Environment and Land Court. It would cease to be a matter of one party seeking to collect a simple debt from another, and become a case of the party seeking to alienate land from the other. Should the borrower/chargor/land-owner move to court, over the process of enforcement of the right to exercise the statutory power of sale, for example, the resultant suit would then become a land dispute, to protect the title and the land from alienation, and not a debt recovery process.

24. A suit, to forestall exercise of the statutory power of sale, should be seen in that context. The suit would be about the charge, not the money. A suit on the money would be founded on the first contract, on money lending, and not on the second contract, the charge. A suit, filed because the statutory power of sale is being exercised, to stop that process, would not be a suit for recovery of the money, but about the borrower/chargor stopping exercise of the statutory power of sale, in order to secure the charged land. It is about saving the land. It would be a land matter, and not a money dispute. It would be a fight for preservation of the title to the charged land, to prevent or stop its alienation to or by the chargee, under the provisions of the *Land Act*.

25. A dispute on whether a statutory power of sale should be exercised would not be a commercial matter, to be handled by the High Court, for the said power of sale is provided for in land legislation, the *Land Act*, which vests the Environment and Land Court with jurisdiction. It would be a land dispute for the land court, and not a commercial issue for the commercial court. The High Court has no jurisdiction over such, by dint of Articles 162(2) and 165(5) of the *Constitution*, and sections 2 and 150 of the *Land Act*.

26. The right to exercise the statutory power of sale, over charged property, is granted by statute, the *Land Act*. The court, which should oversee the exercise of that power, should be the "court" identified by the *Land Act*, as the court for the purposes of the *Land Act*, or as the "court" vested with jurisdiction over the processes provided for in that Act. That "court" is the Environment and Land Court, and not

the High Court. The charge is a process provided for under the *Land Act*. Any dispute on a charge, including on the exercise of the statutory power of sale of the charged land, falls within the purview of the jurisdiction of the Environment and Land Court, and outside that of the High Court, going by the clear provisions of the *Land Act*.

27. The *Land Registration Act* provides for charges, in Part V of the Act, under sections 56 to 59. Section 56 is on the form and effect of charges. Section 57 is on second and subsequent charges, while section 58 is on a subsequent charge. Section 59 is on the consent of a lender to transfer a charge. None of these provisions refer to the court. The distinction, between the *Land Act* and the *Land Registration Act*, is that the *Land Act* is the substantive law on charges, and the processes around them, inclusive of the remedies and reliefs in case of disputes; while the *Land Registration Act* is about registration of the charges envisaged in the *Land Act*.

28. Disputes do often arise between chargors and chargees, over registration of charges. When such disputes arise, they would be subject to adjudication by the courts. The *Land Registration Act* defines "court," as used in the Act, and for the purposes of the said Act, as follows: ""Court" means the Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D), and other courts having jurisdiction on matters relating to land." Section 101 identifies the courts that exercise jurisdiction over disputes on the processes the subject of the Act, as follows:

> " 101. Jurisdiction of court
>
> The Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act."

29. The *Land Act* and the *Land Registration Act* are related. They both deal with the same subject, land. Their provisions cover the substance of the same subject-matter. They both provide for charges on land. They both vest jurisdiction on the Environment and Land Court, and enabled subordinate courts, on disputes and actions over the processes provided for under the 2 statutes.

30. The suit herein is by borrowers, who have, allegedly, defaulted in their obligations under the money lending contract. Upon the alleged default, the money-lender chose not to pursue recovery of the money directly, through a suit at the High Court, for simple debt, electing, instead, to pursue the second option, of enforcing the terms of the charge, by exercising the rights conferred upon it by the charge, under the *Land Act*, the statutory power of sale. The preliminary steps were taken, in the form of the requisite statutory notices and advertisement of the sale of the charged land. The suit herein, by the borrowers, seeks to stop exercise of that statutory power of sale, to prevent or stop alienation of their title to the charged land. The dispute is not about the money, but the land. Their primary prayer begs the court to grant a permanent injunction, to restrain sale of their land. The prayer for accounts is secondary, ancillary to the first. The provision of the accounts would obviate the need to sell the property, should it be established, from those accounts, that nothing is owing.

31. For avoidance of doubt, the pleadings on the prayers sought, in the plaint herein, read as follows:

> " Reasons wherefore the plaintiff prays for Judgment against the defendant for;-
>
> a. A permanent injunction restraining the 1st and 2nd Defendant/Respondents whether by themselves, their agents, workers and or servants from alienating, selling or in any way interfering with land parcel number L.R. NO. Bukhayo/ Mundika/11942.

b. An order requiring the 1st Defendant to render accounts and avail an updated account statement for the Plaintiff.

c. Costs of the suit.

d. Any other or further relief that this honorable court may deem fit to grant."

32. No doubt, the lender has given up on recovering any moneys from the borrowers, and has opted to pursue the charged land, in the quest to sell it, in exercise of its statutory power of sale, granted to it under the *Land Act*. The lender is no longer interested in asking the borrowers to pay up. It seeks, instead, to alienate the charged land. What has provoked the filing of the suit, is not a demand by the lender, for payment of the moneys owed, but the initiation of the process towards exercise of the statutory power of sale. That is what has brought the borrowers to court, and that is what the suit is about. It is not about whether the borrowers should pay or be ordered to pay the money owed, but about whether the lender should exercise its statutory power of sale. It should be notable that the suit herein is not by the lender, to recover its money, but by the borrowers, to save their charged land, after it has been put up for sale by the lender, on the strength of the charge. That is why I argue that the suit is about the land, not the money.

33. It is, on the basis of everything that I have said above, that I disagree with Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA). Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA), with profound respect, in my view, crafts a jurisdiction for the High Court, yet the *Land Act* and the *Land Registration Act* expressly confer that same jurisdiction on the Environment and Land Court and the empowered subordinate courts. The High Court cannot possibly have any jurisdiction over the matter herein, in view of what the statutes provide.

34. The effect, of Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA), is to render meaningless, the provisions in sections 2 and 150 of the *Land Act* and sections 2 and 101 of the *Land Registration Act*, and to take away jurisdiction from the Environment and Land Court, and confer it upon the High Court. Yet, it is the *Constitution* and Parliament, through legislation, which confer jurisdiction. Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA) does not attempt to construe sections 2 and 150 of the *Land Act* and sections 2 and 101 of the *Land Registration Act*, and to declare them to be bad in some way, and, ultimately, pronounce them useless or inoperative. Instead, it proceeds as if these provisions do not exist.

35. As indicated above, I have already taken a position on these matters, with respect to jurisdiction, and, indeed, it was on that account that this matter was initially filed at the Environment and Land Court, for the parties were already aware that I had declared that I have no jurisdiction, so far as cases of this nature are concerned. I still stand by my earlier position, that there is no jurisdiction, under the *Land Act*, for the High Court, to restrain exercise of the statutory power of sale.

36. However, although I am of the conviction that I am bereft of jurisdiction, and should, ideally, down my tools, in keeping with Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] KLR 1 [1989] eKLR [1989] KECA 48 (KLR) (Nyarangi, Masime & Kwach, JJA), I shall proceed to handle this matter, as the decision, in Co-operative Bank of Kenya Limited vs. Patrick Kang'ethe Njuguna & 5 others [2017] eKLR [2017] KECA 79 (KLR) (Visram, Karanja & Koome, JJA), is binding on me, being by a higher court.

37. Let me now advert to the application, placed before me, dated 13th November 2024, which seeks an order of temporary injunction, to restrain the defendants from selling Bukhayo/Mundika/11942, pending the hearing and determination of the suit herein. There is a further prayer, relating to suspension of further deductions and accrual of interest, and rendering of accounts. The sale was scheduled for 29th October 2024. The case, by the plaintiffs, is that they had been servicing their loan, and that the fact of default was never communicated to them, on the exact outstanding balances.

38. The application was opposed by the defendants, through an affidavit sworn by an officer of the 1st defendant, on 6th December 2024. She avers that the plaintiffs were in default, hence the steps taken to exercise the statutory power of sale, by realising the security. She further avers that all the relevant statutory notices had been issued and served, in compliance with the applicable law.

39. The principal issue, for determination, is whether the order sought, of temporary injunction, should issue against the defendants, together with the other orders.

40. The court has discretion, to grant a temporary or interim injunction, according to Nyutu & 3 others vs. Gatheru & 2 others [1990] KLR 554 [1990] eKLR [1990] KEHC 51 (KLR) (Bosire, J), which discretion must be judicially exercised. Order 40 of the Civil Procedure Rules provides for temporary or interlocutory injunctions, and the principles, upon which the order may be granted, were settled in Giella vs. Cassman Brown & Co. Ltd [1973] EA 358 (Sir William Duffus P, Spry VP & Law JA). 3 key principles were identified. These are: that the applicant must establish existence of a prima facie case, with probability of success at the trial; that a temporary injunction would not be granted, unless the applicant would suffer irreparable damage, which would not be compensable in damages; and that, where in doubt, the court will determine the application on a balance of convenience. A modern rendition of these principles can be found in Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) (Ouko, Kiage & M'Inoti, JJA).

41. The plaintiffs have alleged that they have not been in default, for they have been servicing the loan. Yet, they have not attached any documents as proof of their compliance with the terms of the loan agreement. That would suffice, for me, to find that there is no prima facie case, with probability of success, for trial, at the main hearing of the suit. See Nguruman Limited vs. Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) (Ouko, Kiage & M'Inoti, JJA). A permanent injunction cannot, ultimately, be granted, without evidence that the debt had been cleared, and some evidence of substantial payment would be critical, at this interlocutory stage, to point towards a possibility that that debt had been settled.

42. Additionally, the sale sought to be stopped was scheduled for 29th October 2024. The suit was filed on 13th November 2024, after expiry of that date, yet there was no explanation as to what happened on 29th October 2024. In the ruling, of 20th March 2025, Olao J had pointed out that when the matter was initially placed before him, under certificate of urgency, he had declined to grant an ex parte temporary order of injunction, for that very reason. He further indicated that, even if he had jurisdiction, he would not still have granted the interim injunction order, as the date, for sale, upon which the application was predicated, had passed. I hold the same view. That prayer has been overtaken by events, for the date of sale of the property has long passed. Indeed, it had passed even before the suit itself was filed! There is no telling whether the property, sought to be saved, vide the injunction order prayed for, still exists, or was sold on 29th October 2024.

43. The plaintiffs do not allege that they would suffer irreparable harm, which cannot be compensated in damages, and, therefore, I shall not tax my mind considering that. Neither does the issue of balance

of convenience arise, for I am in no doubt at all, that a case has not been made out, at this stage, for grant of the injunctive orders sought.

44. On suspension of further deductions and accrual of interests, I reiterate that the plaintiffs have not placed on record documents that would suggest that they have been repaying the loan, to the extent of clearing all what is due, or a substantial part of it, to provide justification for grant of these orders.

45. However, on the prayer for rendering of accounts or provision of an updated statement of account, that is of the loan, I would see no harm, nor any hardship on the part of the defendants, with providing the plaintiffs with that. The defendants claim that the account is outstanding, let them avail the plaintiffs with an updated statement of account, for whatever it would be worth. I do not think furnishing of such an account, at this stage, would be admission of liability on their part, for access to information would be a constitutional right, for parties who are in a relationship, such as the one that the parties hereto are in. Being furnished with a statement of accounts, in relation to their own account with the 1st defendant, would be something that they are entitled to as a matter of right. I note that the defendants have, in the affidavit sworn on their behalf, disclosed the amounts due, but I suppose the plaintiffs are interested in a breakdown of those figures.

46. In the end, I am not persuaded that the orders sought, in prayers 3 and 4, in the application, dated 13th November 2024, should be granted. I hereby, therefore, decline to grant a temporary order of injunction, to restrain the defendants, whether by themselves or their servants or agents, from selling Bukhayo/Mundika/11942, pending the hearing and determination of this suit. I also decline to grant prayer 4, but prayer 5 is granted. The updated statement of account, on the loan, to be furnished within 45 days. This matter shall be mentioned, on 18th November 2025, for pre-trial, and for compliance, with respect to the order on provision of accounts. It is so ordered.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 3RD DAY OF OCTOBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Obimba, instructed by BM Ouma & Company, Advocates for the plaintiffs.

Mr. Nyanjwa, instructed by Mwaniki Gachoka & Company, Advocates for the defendants.