



Yego v African Banking Corporation Limited & another (Civil Suit E002 of 2025) [2025] KEHC 13931 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E002 OF 2025
E OMINDE, J
OCTOBER 2, 2025**

BETWEEN

BONFACE KIPROTICH YEGO PLAINTIFF

AND

AFRICAN BANKING CORPORATION LIMITED 1ST DEFENDANT

IGARE AUCTIONEERS 2ND DEFENDANT

RULING

1. By way of Notice of Motion dated 24th March 2025, the Applicant seeks the following orders;
 1. Spent
 2. Spent
 3. Spent
 4. That a temporary injunction do issue restraining the 1st Respondent jointly and severally either by themselves, agents, assigns, employees, servants and/or any other person(s) expressly and/ or impliedly acting on their behalf from offering for sale by way of public auction or private treaty and/ or disposing or dealing in any manner in Title No. Ngeria/ Megun Block 3 (Kimuri) 226, in detriment to the Plaintiff rights pending the hearing and determination of the main suit.
 5. That costs be provided for.
2. The Application is expressed to be brought under Order 40 Rule (1), (2), (9) and Order 50 Rule 1 of the Civil Procedure Rules and Section 1A, 1B, and 3A, 63 (e) of the *Civil Procedure Act* and all enabling provisions of the Law. Additionally, the Application is premised on the grounds on the face of it and the averments of the Applicant in his supporting affidavit.



3. In his affidavit, he deponed that he was an employee of the 1st Defendant herein and out of the relationship he took a loan facility of Kshs. 5,250,000/=. He annexed and marked as BKY-1(a)&(b) a copy of letter of appointment and letter of offer. Further, that he guaranteed the loan by offering a security to the loan being title deed for title no. Ngeria/Megun /Block 3 (Kimuri)/226 and he annexed and marked as BKY-2 a copy of the title deed. the deponent averred that he has been faithful in repaying the loan amount in monthly instalments of Kshs. 43,914 despite the 1st Defendant raising the interest rates arbitrarily. Further, that the 1st Defendant has now instructed the 2nd Defendant who are their agents who have advertised the aforesaid property for sale by way of public auction in exercise of its statutory power of sale on the 26th March, 2025 and if the auction is carried out, he will suffer great loss and damage. He further stated that the 1st Defendant did not issue the statutory notices prior to commencing the sale process hence the purported sale is premature.
4. The deponent urged that the Respondents have undervalued the suit property by stating that it carries a market value of Kshs. 18,600,000.00 while the real Market Value is over Kshs. 30,000,000.00 adding that he will seek court's indulgence to file the most recent valuation report. He urged that he is ready and willing to liquidate the amount due to the 1st Respondent in reasonable and/or the agreed equal monthly instalments if any, provided it is proved after accounts have been taken and regularized. Additionally, that he has a willing buyer to the suit land who is willing to pay off the loan balance if any. The applicant stated that he will suffer irreparable loss and damages as the subject Ngeria/Megun / Block 3 (Kimuri)/226 is the only source of income after he resigned from the 1st Defendant company and the only parcel of land he lives with his family. He prayed that the application be allowed on the interest of justice.

Defendants' Replying Affidavit

5. The 1st Defendant opposed the application vide a replying affidavit dated 1st April 2025 sworn by Kajuju Marete, the Legal Manager at the 1st Defendant. She deponed that the 2nd Defendant is an agent of the bank and was acting in that capacity in the events preceding the filing of the present suit. She urged that on or about 18th June 2015 and at the Plaintiff's behest, the 1st Defendant agreed to advance the Plaintiff a Mortgage Loan facility via a Letter of Offer dated 18th June 2015 and set down the terms therein. She annexed and marked as KM 1 a copy of the Letter of Offer dated 1st June 2015 indicating the terms. Further, that the Plaintiff duly executed both the Letter of Offer and Memorandum of Acceptance indicating that he had read and understood the terms and conditions therein and agreed to be bound by the same.
6. Vide an amendment to the letter of offer dated 12th August 2025, in response to the Plaintiffs request to the bank, the securities were amended to be only one immovable property, that is property title number: Ngeria/Megun Block 3 (Kimuri)/ 226 registered in the name of the borrower. She stated that Plaintiff also duly executed both the Amendment to the letter of offer and Memorandum of Acceptance indicating that he had read and understood the terms and conditions therein and agreed to be bound by the same. She annexed and marked KM2 a copy of the Amendment to letter of offer on Banking Facilities. The entire loan facility therefore became secured by a legal charge over property title number Ngeria/Megun Block 3 (Kimuri)/ 226 registered in the name of the Plaintiff as the borrower and Chargor herein. She additionally annexed and marked as KM3 a copy of charge dated 15th October 2015 and registered on 13th October 2015 indicating as much.
7. She stated that the loan facility was thereafter disbursed to the Plaintiff who ran into arrears and ultimately defaulted. The Defendant then issued a 30 days' demand notice dated 30th October 2023 informing the Plaintiff that he had an outstanding loan balance of Kshs. 4,289,747.20. She annexed and



- marked as KM4 a copy of the 30 days demand notice dated 30th October 2023. When the initial demand notice failed to yield a positive response, the 1st Defendant thereafter issued a 90 days Statutory Notice dated 26th February 2024 over the charged property to both the Chargor and his Spouse requiring them to clear the outstanding sum. She annexed and marked as KM 5(a) and KM5 (b) copies of the 90 Days' Statutory Notice together with certificate of postage.
8. When the Plaintiff refused to clear the outstanding sum the 1st Defendant bank then issued the 40 days Notices to sell dated 5th June 2024 to both the Chargor and his Spouse demanding the loan balance. She annexed and marked as KM6 (a), & KM 6(b) copies of the 40 Days' Notice and certificate of postage. After the Chargor failed to respond, the defendant, through its agent, Igare Auctioneers, served the Chargor with the 45 Days Redemption Notice dated 10th January 2025 together with Notification of sale, personally and via registered post. She annexed and marked as KM 7(a), KM7(b) & KM7(c) copies of the 45 Days' Redemption Notice, Notification of sale and postage receipt.
 9. Further, that the 2nd Defendant also issued instructions to Laser Property Services to value the charged parcel of land as required under the, a valuation report dated 18th June 2024 was duly prepared indicating the forced sale value of the property as Kshs. 13,950,000.00 thus the allegation of undervaluation by the Plaintiff are unfounded. She annexed and marked as KM8 a copy of the valuation report dated 18th June 2024. The Auctioneer proceeded to advertise the suit property for sale by way of public auction and the sale was to take place on Wednesday 28th March 2025 at 12.00 noon when the Plaintiff rushed to file the present suit. She annexed and marked as KM 9 a copy of the Standard Newspaper advertisement dated 11th March 2025 indicating as much.
 10. The deponent annexed a copy of and marked as KM 10 a copy of the Plaintiff's Statement of Account dated 1st April 2025 indicating that the outstanding balance is Kshs. 5,597,732.20/- as at 1st April 2025 November which amount continues to accrue interest and it is in the interest of justice that the 1st Defendant be allowed to proceed with the sale to recover the said sums owed.
 11. She urged that the allegation that statutory notices were not served is baseless and untrue and further, that the Plaintiff has not demonstrated that he will suffer any irreparable harm that cannot be compensated with damages if the bank is allowed to proceed with statutory sale. She prayed the court dismiss the application with costs.

Applicants' Submissions

12. Learned Counsel for the applicant submitted that as a general rule the conditions for grant of temporary injunctions were settled in the case on *Giella v Cassman Brown* [1973] EA 358 to wit; An applicant has to show a prima facie case with probability of success; 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; and if the court is in doubt, it will decide the application on a balance of convenience. Counsel cited the case of *Nguruman Limited versus Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that all the conditions are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.
13. On a prima facie case, counsel cited the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR where the court defined the same and urged that the Applicants can be said to have demonstrated a prima facie case. He urged that the Applicant took a loan from the 1st Respondent of Kshs 5,250,00/- and at the time of filing this suit the Applicant contends that he had paid a substantial amount of the loan and if the 1st Respondent was to issue an updated loan statement account as requested by the Applicant. He reiterated the Applicant's deposition willingness to repay,



that the property was greatly undervalued and that he has already secured a buyer who is ready and willing to pay off the entire loan amount and the excess balance remitted to the applicant. Counsel urged the court to make a finding that the Applicant has demonstrated a prima facie case to warrant issuance of a temporary injunction hence the Application should be allowed with costs to the Plaintiff/ Applicant.

14. On irreparable harm, counsel urged that the applicant would suffer irreparable harm if the orders sought are not granted, placing reliance on the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai (2018) eKLR. He further stated that the Applicant is the sole registered owner of all that Property known as Ngeria/Megun /Block 3 (Kimuri)/226 and reiterated that he had paid a substantial amount of the loan. Additionally, that the property being a matrimonial property which the Applicant and his family hold with sentimental attachment cannot be compensated with monetary value.
15. On balance of convenience, counsel urged the Court to put into focus both the Applicants' rights and the Respondents' right and resort to the lower risk rather than higher risk of injustice and again relied on the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai (2018) eKLR which defined the concept of balance of convenience and urged the court to allow the application with costs.

Respondents' submissions

16. Learned Counsel for the respondents urged that an interlocutory injunction can only be granted where the Applicant establishes a prima facie case with probability of success. He too cited the definition of a prima facie case in the case of Mrao Limited -vs- First American Bank of Kenya Limited & 2 others [2003] eKLR and urged that the Court must ascertain at the initial stage whether there is a reasonable likelihood that the Applicant has a legally protected right that has been infringed or is at risk of infringement in order for the remedy sought to be granted. Counsel stated that in order to determine whether or not a prima facie case has been established, the court must determine whether the Applicant was served with the requisite Statutory Notices, and whether there was an undervaluation of the suit property.
17. Counsel reiterated that the 1st Respondent advanced to the Applicant a Mortgage Loan Facility of Kshs. 5,225,389/- secured by the registration of a charge over the properties Title Numbers Pioneer/ Racecourse Block 2 (Kampale)/65 and Ngeria/Megun Block 3 (Kimuri)/226 which securities were then amended to only be the latter property, vide the amendment to the letter of offer dated 12th August 2025. The loan facility was disbursed to the Applicant, who then defaulted. Counsel reproduced the sequence of the exercise of statutory power of sale and urged that the applicant was issued with all the required statutory notices.
18. Counsel cited the case of Nyagilo Ochieng & Another vs. Phanuel B. Ochieng & 2 Others [1996] eKLR and urged that all the requisite statutory notices were duly issued and served upon the Applicant. Furthermore, the 45-day redemption notice and the notification of sale were served both in person and via registered post, a fact that the 1st Respondent has clearly proven. Additionally, that it is equally crucial to note that the Applicant has not contested or disputed the accuracy of the postal address used for service of the said notices.
19. On undervaluation of the suit property, counsel submitted that the 1st Respondent issued instructions to Laser Property Services to value the charged parcel of land as required under Section 97 of the [Land Act](#). A valuation report dated 18th June 2024 was duly prepared determining the Market value as Kshs. 18,600,000/- and the forced sale value of the property as Kshs. 13,950,000/-. Further, that the Applicant is yet to file a valuation report as evidence that the property is worth Kshs. 30,000,000/-. Counsel cited the case of Palmy Company Limited v Consolidated Bank of Kenya Limited [2014]



- eKLR and the case of *Zum Zum Investment Limited v Habib Bank Limited* [2014] KEHC 6207 (KLR) in support of the submissions. She pointed out that in the supporting affidavit at Paragraph 7 the Applicant states that he would be providing a 'most recent valuation report' which has not been filed despite the Applicant having sufficient time to do so pursuant to the directions issued by this Court on 2nd April 2025 indicating that he files a Further Affidavit if necessary.
20. Counsel submitted that the applicant has not challenged the qualifications or the competence of Laser Property Services who prepared the report dated 18th June 2024. Further, that the applicant has not provided any evidence to show that irrelevant factors were considered as part of the valuation or that the valuation was done way before the intended sale. Counsel cited the case of *Hussein v First Community Bank Limited* (Civil Case E020 of 2023) [2023] KEHC 22636 (KLR) (19 September 2023) (Ruling) and urged that in the absence of the Applicant's counter valuation report, there is absolutely no basis for the Applicant's allegations that the 1st respondent has undervalued the charged property.
 21. Counsel clarified the position regarding interest rates, stating that the Applicant was an employee of the 1st Respondent at the time he sought the loan facility and the same attracted interest at the concessional staff rate which is clearly stipulated at paragraph 4.2 of the Letter of Offer dated 18th June 2015. That upon cessation of the Applicant's employment with the 1st Respondent, the applicable interest rate on the loan facility reverted from the Staff Rate to the prevailing Market Rate which is also stipulated at paragraph 4.2 of the Letter of Offer. In the circumstances, the Applicant is estopped from alleging that the 1st Respondent arbitrarily varied the interest rate, as such adjustment was in accordance with the agreed terms of the loan facility.
 22. Counsel urged that the applicant has approached the court with unclean hands as he is facing criminal charges related to fraud as he sold the suit property to an unsuspecting purchaser who made partial payments on the understanding that the balance would be cleared upon successful transfer of the property. The Applicant failed to disclose that the property was encumbered in favour of the 1st Respondent, which held the original title deed as security for an outstanding loan facility. Counsel cited the case of *Daniel Kamau Mugambi v Housing Finance Company of Kenya Ltd* [2006] eKLR in this regard. He urged that an injunction is an equitable remedy and a party seeking such a remedy must conduct himself in relation to the suit and the matter at hand in a manner that will meet the approval of a court of equity. He stated that the Applicant is not entitled to the orders sought in his application.
 23. On irreparable harm, counsel urged that the Applicant has failed to demonstrate that they will suffer any irreparable harm that cannot be compensated in damages should the orders sought not be granted. He cited the case of *JM v SMK & 4 others* [2022] eKLR on the definition of irreparable harm. In response to the allegation that the property has sentimental attachment that cannot be compensated with monetary value, counsel cited the cases of *Mctough & another v National Bank of Kenya Limited & another* (Civil Case E003 of 2023) [2023] KEHC 27486 (KLR) (31 July 2023) (Ruling) and *Wesley Kibagendi Jason v ECO Bank Ltd & another* [2020] eKLR, urging that the Applicant willingly offered the suit property as security for the loan taken because it had a commercial value attached to it. It is primarily on this strength that the loan was advanced. Further, that the Applicant. Was aware of his obligations under the Letter of Offer and that defaulting on the loan repayments would trigger the realization of the charged property.
 24. Counsel submitted that there is no risk of the Applicants suffering irreparable loss that cannot be compensated in damages as a valuation can be conducted on the charged property and the damages quantified with exactitude for purposes of compensation. He pointed out the Applicant's assertion that he has secured a ready and willing purchaser for the suit property which admission undermines his claims of sentimental attachment to the property and demonstrates a willingness to part with it.



25. On balance of convenience, counsel cited the case of *Kala t/a Moyale Raha Express v Premier Bank Ltd* [2024] KEHC 7621 (KLR) and *Jim Kennedy Kiriro Njeru v Equity Bank (K) Limited* [2019] KEHC 9788 (KLR), urging that from the arguments presented, it is evident that the 1st Respondent would suffer greater inconvenience should the orders sought in the application be granted. This is due to the fact that the loan would remain in arrears, thus impeding the 1st Respondent's operations and exposing it to the risk of unmitigated losses. He urged that the balance of convenience tilts in favour of dismissing the Application as the Applicant's loan account remains in arrears.
26. On the prayer for a permanent injunction pending the hearing and determination of the main suit, counsel submitted that the Applicants have misdirected themselves in seeking a permanent injunction at interlocutory stage. The nature of the order sought is in substance, temporary in nature. He urged the court to dismiss the Application with costs.

Analysis & Determination

27. Having addressed my mind to the pleadings and the submissions, it is my considered opinion that the following issue arises for determination.

Whether an order of injunction should issue

28. A determination on whether to grant interim injunctions is governed by Order 40 Rule 1 of the Civil Procedure Rules which provides as follows;

“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.
29. The principles that guide a Court in dealing with applications for injunctions were well settled in the celebrated case of *Giella –vs-Cassman Brown and Company Limited*, Civil Appeal No. 51 of 1972 where it was held as follows:
- i. The Applicant must establish a prima facie case with a probability of success.
 - ii. Applicant has to demonstrate that it will suffer irreparable injury which cannot be compensated by damages.
 - iii. Applicant has to demonstrate that balance of convenience tilts in its favour.



30. Further, in *Nguruman Limited v Jane Bonde Nielsen and 2 Others*, NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, the Court of Appeal reiterated the above principles and gave the following guidelines:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. 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. Afraha Education Society* [2001] Vol. 1 EA 86). If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

31. The 1st issue then that comes up for determination is whether the Applicant has established a prima facie case with a high probability of success. As already stated elsewhere in this Ruling, what comprises a prima facie case is as stated in the case of *Mrao Limited (Supra)*. It should be further noted that in the case on *Nguruman Ltd* above, the court after stressing that the three pillars set out in the *Giella Case* herein cited are sequential and are to be surmounted one after the other, the court concluded by stating that If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. It follows therefore that if the court is satisfied that a prima facie case has not been established then it will not consider the other two pillars.

32. The substratum of the Applicant’s case is that he was not served with the requisite notices to warrant the Respondent advertising his property for sale. The answer to this complaint ideally lies in the response filed by the defendant. In their Replying Affidavit, the Respondent’s deposed that all the requisite Statutory Notices were served not just on the Applicant but on his spouse as well as already herein summarized. All the Notices were annexed together with the evidence of postage. The Notices served are as follows;

1. A 30 days’ demand notice dated 30th October 2023 informing the Plaintiff that he had an outstanding loan balance of Kshs. 4,289,747.20.
2. A 90 days Statutory Notice dated 26th February 2024 over the charged property to both the Chargor and his Spouse
3. A 40 days Notices to sell dated 5th June 2024 to both the Chargor and his Spouse demanding the loan balance.
4. A 45 Days Redemption Notice dated 10th January 2025 together with Notification of sale, personally and via registered post.

33. The relevant documentation was duly annexed by the Respondents to their Replying Affidavit as already summarized herein. The Respondent also annexed the Bank Statement that shows the amount of money disbursed and the balance still owing as above summarized is quite substantial and as submitted by the Respondents the court also notes that notwithstanding the Applicant’s undertaking to avail an independent valuation report to counter the valuation done by the Respondents which



he states grossly undervalued his property did not avail any. The Court further notes that all the depositions made in the Respondent's Replying Affidavit were not in any way countered, controverted and or denied by way of a further affidavit and so in essence the facts therein deposed were not controverted.

34. The above being the case, I am satisfied that contrary to the Applicant's assertions, the Respondent did properly serve him with every requisite Statutory Notice as is required of them. Further, from the uncontroverted evidence proffered by the Respondents the loan as advanced in June 2015 was Ks. 5,250,000/- and that at the time the 30 days' Statutory Notice issued in October 2023, the amount outstanding was Ks. 4, 289, 747. 20 and by April 2025 had again risen to Ks. 5, 597, 732. 20, I am satisfied that the amount owed by the Applicant is indeed substantial and if the Applicant had been making effort to pay as he has deposed, the loan amount would have significantly reduced by a huge margin over the aggregate period of 10 years.
35. In light of my findings as above, I find that the Applicant has not at all established a prima facie case with any probability of success and with this finding then, the court need not consider the other two pillars as set out in the case of *Giella v Cassman Brown*. The upshot then is that the Applicant's Application lacks merit and the same is accordingly dismissed in its entirety, the interim orders herein issued are now hereby vacated and the Applicant is to pay the Respondent the costs of this Application.

READ DATED AND SIGNED AT ITEN ON 2ND OCTOBER 2025

E. OMINDE

JUDGE

