



**Amukowa v Family Bank Limited & another (Commercial Suit E654 of 2024)  
[2025] KEHC 15412 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15412 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL SUIT E654 OF 2024  
FG MUGAMBI, J  
OCTOBER 23, 2025**

**BETWEEN**

**DR WYCLIFFE AMUKOWA ..... APPLICANT**

**AND**

**FAMILY BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KESYIAN AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction and Background**

1. This Court is called upon to determine the application dated 29<sup>th</sup> October 2024, filed by the plaintiff. By that application, the applicant seeks injunctive relief to restrain the respondent from selling, alienating, or in any manner interfering with land parcel No. Marama/Shinamwenyuli/2821 (hereinafter “the suit property”), pending the hearing and determination of this suit.
2. The applicant concedes that he obtained two loan facilities from the 1<sup>st</sup> respondent Bank: Kshs. 4,500,000/= in the first instance, and Kshs. 2,000,000/= in the second. These were subsequently consolidated into a facility of Kshs. 6,700,000/= by a letter of offer dated 22<sup>nd</sup> November 2021. He, however, takes issue with the Bank’s conduct, contending that despite securing the second facility with the suit property, the Bank only disbursed Kshs. 1,465,328.77 of the Kshs. 2,200,000/= balance, and yet proceeded to issue him with a statutory notice of sale before releasing the full loan sum.
3. The Bank, through the replying affidavit sworn on 18<sup>th</sup> February 2025 by its Legal Manager, Wambani Deya, acknowledges advancing the first facility of Kshs. 4,500,000/=. It avers that the second facility of Kshs. 6,700,000/= was approved on terms that the second facility would offset the earlier debt while the balance of Kshs. 2,200,000/= would be made available to the applicant for personal development.



4. The facility was secured by a legal charge over the suit property. According to the Bank, before perfection of the charge, the applicant requested and was advanced the amount of Kshs. 1,465,327.77, inclusive of insurance, processing, valuation fees, and excise duty. The Bank maintains that the remaining balance was conditional upon full perfection of security, which was only completed upon registration of the charge on 17<sup>th</sup> February 2022. The Bank further asserts that the applicant fell into default, thereby prompting issuance of the requisite statutory notices under the Land Act, 2012.
5. The Bank clarifies that the facility amount was Kshs. 6,700,000/= and that the interest calculated is premised on the amount disbursed and not the facility amount.

### **Analysis and Determination**

6. I have considered the pleadings, affidavits, annexures and the rival submissions. The principles governing the grant of interlocutory injunctions are well settled in *Giella V Cassman Brown & Co. Ltd*, [1973] EA 358, as reiterated in *Nguruman Limited V Jan Bonde Nielsen & 2 Others*, [2014] eKLR. An applicant must establish a prima facie case with a probability of success, demonstrate that irreparable harm not compensable in damages would result if the injunction is not granted, and, where doubt exists, the court must decide the matter on a balance of convenience.
7. From the material before me, it is undisputed that the applicant obtained facilities from the respondent Bank, secured by a charge over the suit property. The Bank has produced offer letters and loan statements (marked WD1–WD4) confirming that the applicant was advanced Kshs. 4,500,000/= on 28<sup>th</sup> July 2021, and later applied for Kshs. 6,700,000/= in November 2021. The loan statements show that the second facility was partly applied to offset the first loan, leaving Kshs. 1,465,328.77 disbursed to the applicant on 11<sup>th</sup> December 2021. The fact of the consolidation is admitted by the applicant as well.
8. As at 31<sup>st</sup> December 2024, the first account reflected arrears of Kshs. 5,247,156.30 while the second facility was in arrears of Kshs. 1,774,978.74. The applicant's assertion that the Bank has unlawfully withheld the balance of the loan for nearly three years is unsupported by evidence. Significantly, no correspondence has been placed before the Court showing that the applicant raised complaint or followed up with the Bank since December 2021. It is implausible that a borrower would remain silent for years if indeed such substantial funds had remained undisbursed.
9. In *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others*, [2003] KLR 125, the Court of Appeal underscored that a prima facie case is more than an arguable case; it must be supported by evidence that, if uncontroverted, would entitle the applicant to relief. Here, the evidence tilts heavily in favour of the Bank's position that the facilities were advanced, arrears exist, and statutory notices were issued. The statutory framework under Sections 90 and 96 of the Land Act, 2012 entitles a chargee to realize its security once a chargor defaults and the prescribed notices have been served.
10. The applicant has not demonstrated any procedural impropriety in the exercise of the Bank's statutory power of sale. On the contrary, the Bank appears to have complied with the law by issuing the requisite notices. The plea that the Bank withheld loan proceeds, standing alone and unsupported by contemporaneous evidence, does not amount to a prima facie case warranting the Court's equitable intervention.
11. Since the first limb of the *Giella* test has not been met, the Court need not proceed to interrogate irreparable harm or balance of convenience. As observed in *Nguruman Limited V Jan Bonde Nielsen & 2 Others* [Supra], if a party fails to establish a prima facie case, the Court need not proceed to consider the other limbs of the test.



**Disposition**

12. In light of the foregoing, I am not satisfied that the applicant has met the threshold for the grant of an interlocutory injunction. The application dated 29<sup>th</sup> October 2024 is accordingly dismissed with costs to the respondent. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**F. MUGAMBI**

**JUDGE**

