



**Lake Naivasha Crescent Camp Limited v SBM Bank (K) Limited The
Successor of Chase Bank (K) Limited (In Liquidation) (for this Account) (Civil
Case 24 of 2017) [2025] KEHC 14914 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 24 OF 2017
HI ONG'UDI, J
OCTOBER 23, 2025**

BETWEEN

LAKE NAIVASHA CRESCENT CAMP LIMITED PLAINTIFF

AND

**SBM BANK (K) LIMITED THE SUCCESSOR OF CHASE BANK (K) LIMITED
(IN LIQUIDATION) (FOR THIS ACCOUNT) DEFENDANT**

RULING

1. In the Notice of motion application dated 4th November 2024 by the defendant/applicant herein prays for the following orders;
 - i. Spent.
 - ii. This honourable court be and is hereby pleased to set aside and/or discharge the status quo order issued on 31st May 2018 restraining the defendant/ applicant and all other persons acting on its instructions from selling by public auction and/or private treaty and/or dealing in any manner whatsoever with the charged properties known as Title No. Nakuru Municipality Block 5/196 and L.R. No. 13542/68 (I.R. 103933) Nakuru Municipality.
 - iii. The cost of the application be awarded to the defendant/applicant.
2. The application is premised on the grounds on its face as well as the affidavit of the defendant/ applicant's legal officer sworn on even date. He deponed that the defendant/ applicant advanced varying banking facilities to the plaintiff /respondent which were secured by a charge over the properties Title Numbers Nakuru/Municipality Block 5/196 and L.R. No. 13542/68 (IR 103933) Nakuru Municipality. He stated that the plaintiff/respondent fell into arrears leading to the issuance of demand notices and commencement of the recovery process by the defendant/applicant.



3. He further deponed that the plaintiff/respondent through an application dated 18th May 2017 moved the court seeking to restrain the defendant/applicant or its agents from auctioning, disposing of, transferring or interfering with the suit property. However, before the said application could be heard and determined, it was withdrawn and on 31st May 2018 the court ordered status quo to be maintained pending the hearing and determination of the main suit.
4. He stated that the defendant/applicant regularized the amount owing under the facility and submitted a settlement proposal dated 21st February 2022 to the plaintiff/applicant who executed it. However, the plaintiff/respondent breached the terms of the settlement and extension period and continued to enjoy interim injunctive orders which had subsisted for over six (6) years and had not taken any steps to offset the outstanding amount.
5. He further stated that it was clear that the plaintiff /respondent rushed to court with unclean hands with the sole intention of frustrating the recovery process commenced by the defendant/applicant and the status quo order was being abused to defeat it's remedy of sale. Thus, unless the status quo order is discharged, the outstanding sum would outstrip the value of the property thereby plunging the defendant/applicant into losses.
6. The plaintiff/respondent in response filed grounds of opposition dated 23rd June 2025. It stated that the application was misconceived, wishy-washy, untenable in law and a complete abuse of the court process. It further stated that SBM Bank (K) Limited lacked the locus standi to initiate this application since it was not a party to the proceedings herein.
7. The defendant/applicant filed a further affidavit sworn on 2nd July 2025 by its legal officer. He deponed that the assertion that the defendant/applicant is a stranger to the proceedings herein and lacked locus standi was misconceived. He stated that by virtue of it being the lawful successor in title to the now-defunct Chase Bank Kenya Limited, it possessed the requisite locus standi to file and prosecute the present application. Further, that clause 44.2 of the legal charge instrument dated 18th December 2015 outlined that the expression "the Bank" included the successors and assigns of the Bank or the persons deriving title under the Bank. He added that it is in the interests of justice that their application be allowed as prayed, with costs to the defendant/applicant.
8. The application was canvassed by way of written submissions.

Defendant/Applicant's submissions

9. These were filed by KOMM Advocates and are dated 16th July 2025. Counsel gave a brief introduction of the case and identified four issues for determination.
10. The first issue is whether SBM Bank (K) Limited has the requisite locus standi to prosecute the present application as a successor in title to Chase Bank (K) Limited. Counsel submitted in the affirmative and referred to clause 44.2 of the charge instrument and the gazette notice dated 6th July 2018 and the Central Bank of Kenya (CBK) Press Release dated 20th August 2018, which confirm that SBM Bank (K) Ltd acquired and assumed certain assets and liabilities of Chase Bank (K) Ltd (in Receivership).
11. The second issue is whether the status quo order issued on 31st May 2018 has been abused by the plaintiff and/or has outlived its lawful and justifiable purpose. Counsel submitted that the status quo order was interim and not intended to serve as a shield for perpetual non-performance. He stated that the plaintiff had only taken one step towards settling the debt by selling one of the charged properties and remitting kshs. 14, 000,000/= which still leaves an outstanding balance of kshs. 29,300,000/= as at 1st February 2024.



12. He further submitted that the status quo order was being exploited as a tactic to frustrate recovery efforts, thereby amounting to an abuse of court process and this court being a court of equity, ought not to countenance such arbitrary abuse of an equitable remedy.
13. The third issue is whether the defendant/applicant has satisfied the legal threshold for setting aside and/or discharging a status quo order under order 40 rule 6 of the Civil Procedure Rules and the inherent powers of the court. Counsel submitted that it is trite law that a party seeking variation and/or discharge of injunctive orders bears the burden of proving that there has been a radical change in the circumstances of the suit or that the beneficiary of the relief is abusing the remedy.
14. The court's attention was drawn to the decision in *Atlas Copco Customer Finance AB v Polarize Enterprises* [2016] eKLR distilled the factors that may be considered when faced with a question of discharge of an injunction. The court held as follows; -

“It is imperative therefore that care be exercised to ensure that the Plaintiff is not merely out to have a re-think of the matter; and in this regard it is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to:

- a. proof that the injunction was obtained by concealment of facts which if presented would have worked against the granting of the injunction;
 - b. a radical change in the circumstances of the suit such that it is no longer necessary to have the injunction;
 - c. proof that the general conduct of the holder of injunction is such that the court is impelled to discharge the injunction for instance where the injunction is being used to intimidate the defendant or achieve an ulterior purpose;
 - d. proof that the sustenance of the injunction would cause an injustice.”
15. Lastly, on who should bear the costs of the application, counsel submitted that it is trite law that costs follow the event, and the defendant/applicant having demonstrated that the instant application is merited, the costs of the application should be borne by the plaintiff/respondent.
 16. He concluded by submitting that the plaintiff/respondent had by its conduct, disintitiled itself from the equitable protection of interim injunctive relief.

Plaintiff/respondent's submission

17. These were filed by Oyugi & Company Advocates and are dated 15th July 2025. Counsel gave a brief summary of the application and submitted that the defendant/applicant was not a party in the proceedings before this court and as such lacked locus standi to apply for setting aside and/or discharge its orders of status quo. He stated that no amount of averments can make it a party to the proceedings herein without substitution and amendment.
18. He cited Order 1 Rule 10 (4) of the Civil Procedure Rules, 2010 which provides as follows:

“Where a defendant is added or substituted, the Plaint shall unless the Court otherwise directs be amended in such manner as may be necessary and amended copies of the summons and the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendants”



19. The court’s attention was drawn to the decision in *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva* (Suing as the Administrator of the Estate of Fanuel Evans Amudavi Deceased) [2016] eKLR

“the issue of locus standi is so cardinal in a civil matter since it runs through the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated for that of a court acting without jurisdiction since it all amounts for null and void proceedings.”

Analysis and determination

20. I have considered the application, the affidavits, grounds of opposition and the submissions by the respective parties. The issues I find falling for determination are as follows;
- i. Whether the defendant/applicant lacks locus standi.
 - ii. Whether the defendant/applicant has made out a case for setting aside and/or discharge of the status quo order issued on 31st May 2018.

Whether the defendant/applicant lacks locus standi.

21. This court notes that the plaintiff/applicant has raised the issue of locus standi, by arguing that the defendant/applicant was not a party in the proceedings before this court and as such lacked locus to apply for setting aside and/or discharge of its orders of status quo. On its part the defendant/applicant argued that clause 44.2 of the charge instrument, the gazette notice dated 6th July 2018 and the Central Bank of Kenya (CBK) press release dated 20th August 2018, confirmed that it had acquired and assumed certain assets and liabilities of Chase Bank (K) Ltd (in Receivership). Thus, it had locus standi to prosecute the present application.
22. In the case of *Law Society of Kenya v Commissioner of Lands & others*, Nakuru High Court Civil Case No 464 of 2000, the Court held as follows; -
- “locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in a court of law”.
23. Also, in *Alfred Njau and others v City Council of Nairobi* (1982) KAR 229, the Court also held as follows; -
- “the term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings”.
24. It is therefore evident that locus standi is the right to appear and be heard in court or other proceedings and literally, it means ‘a place of standing’. Therefore, if a party is found to have no locus standi, then it means he/she cannot be heard on whether or not he has a case worth listening to.



25. The question that begs an answer at this point is whether the defendant/applicant sought to be added or substituted as a party in the suit. Certainly not. Order 1 rule 10 (2) of the Civil Procedure Rules, provides as follows:

“(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

26. Order 1 Rule 10 deals with “substitution and addition of parties” to a suit generally. However, Order 1 Rule 10 (2), is specific that a party may be enjoined as a party to the suit on the court’s own motion or by an application made by the party so praying to be enjoined, provided that the presence of the party will assist the court adjudicate the matters before it without causing miscarriage of justice. This court having carefully perused clause 44.2 of the charge instrument, the gazette notice dated 6th July 2018 and the Central Bank of Kenya (CBK) press release dated 20th August 2018, notes that indeed the defendant/applicant acquired and assumed certain assets and liabilities of Chase Bank (K) Ltd (in Receivership). This court is of the view that the presence of the defendant/applicant will assist the court to adjudicate the matters before it and also save the precious judicial time in the interest of justice.

27. For the said reasons this court hereby orders that the defendant/applicant be enjoined in this matter in place of the former defendant. Therefore, it having been enjoined grants it locus standi to prosecute the application dated 4th November 2024.

Whether the defendant/applicant has made out a case for set aside and/or discharge the status quo order issued on 31st May 2018.

28. I have carefully perused the court records and noted that no order of status quo was issued on 31st May 2018, rather the said orders were issued on 29th May 2018. The said court orders were clear that status quo be maintained pending hearing and determination of this suit. There is no doubt that this suit is yet to be determined since hearing has just commenced. Further, it is trite law that the aim of injunctive orders is to preserve the subject matter pending the hearing and final determination of the suit.

29. Additionally, having carefully perused the application herein and the documents filed in support, I find that the defendant/applicant has not demonstrated plausible reasons to warrant setting aside and/or discharge of the status quo orders issued by this court. The same shall remain in place until this matter is heard and determined.

30. The upshot is that there is no merit in the application dated 4th November 2024 and the same is hereby dismissed.

31. The defendant/applicant is enjoined herein in place of the former defendant.

32. Costs to be in the cause.

33. Parties are directed to fast track the hearing of this suit.

34. The orders herein shall apply in HCC No. 46 of 2017.

35. Orders accordingly.



**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 23RD DAY OF OCTOBER, 2025 IN
OPEN COURT AT NAKURU.**

H. I. ONG'UDI

JUDGE

