



Limied v ABSA Bank of Kenya PLC (Formerly Known as Barclays Bank of Kenya Limited) & another; Nzenge & 2 others (Interested Parties) (Commercial Suit E022 of 2024) [2025] KEHC 15600 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL SUIT E022 OF 2024
A MSHILA, J
OCTOBER 31, 2025**

BETWEEN

VINEYARD PROPERTIES LIMIED PLAINTIFF

AND

ABSA BANK OF KENYA PLC (FORMERLY KNOWN AS BARCLAYS BANK OF KENYA LIMITED) 1ST DEFENDANT

MUGA AUCTIONEERS & GENERAL MERCHANTS 2ND DEFENDANT

AND

NICHOLAS MUEMA NZENGE INTERESTED PARTY

JANE MBULA MUEMA INTERESTED PARTY

JOHN NJENGA KINUTHIA INTERESTED PARTY

RULING

1. Before Court is an application by way of Notice of Motion dated on 12th November, 2024 and brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules, Sections 1A and 1B, 3, 3A, 63 (c and e) of the Civil Procedure Act and all other enabling provisions of the law. The Plaintiff/Applicant sought for orders:-
 - a. SPENT
 - b. That this Honourable Court be pleased to grant an order of temporary injunction restraining the Defendants/Respondents either by themselves, their servants, agents or any person acting on their behalf from selling by way of public auction, transferring, evicting, harassing, threatening or in any manner interfering with the Plaintiff's ownership, occupation and use .of



the suit property known as LR. NO. 7022/352 (Original No. 7022/166/3) Mushroom Estate Kiambu County pending the inter parties hearing of this application.

- c. That this Honourable Court be pleased to grant an order of temporary injunction restraining the Defendants/Respondents either by themselves, their servants, agents or any person acting on their behalf from selling by way of public auction, transferring, evicting, harassing, threatening or in any manner interfering with the Plaintiff/ Applicants ownership, occupation and use of the suit property known as LR NO. 7022/352 (Original No. 7022/16/3) Mushroom Estate, Kiambu County pending the hearing and determination of this application.
 - d. That this Honourable Court be pleased to grant a temporary injunction restraining the Defendants/Respondents either by themselves, their servants, agents or any person acting on their behalf from selling by way of public auction, transferring, harassing, threatening or in any manner interfering with the Plaintiff/Applicant's ownership, occupation and use of the suit property known as LR. NO. 7022/352 (Original No. 7022/166/3) Mushroom Estate, Kiambu County pending the hearing and determination of this suit.
 - e. That the Honourable Court be pleased to issue an order of status quo preserving the suit property known as LR. NO. 7022/352 (Original No. 7022/166/3) Mushroom Estate, Kiambu County, pending the hearing and determination of the application and main suit.
2. The application is premised on the grounds that the Respondents are in the process of selling the suit property by way of a public auction which is irregular and will cause the Applicant to suffer irreparable loss and damage as the interested parties will be evicted from the suit property.
 3. James Muriithi Munyori one of the directors of the Plaintiff/Applicant swore the supporting affidavit on his own behalf and on behalf of his co-directors. He deposed that on 5th October, 2016, the 1st and 2nd Interested Parties entered into a sale agreement with the Applicant for the purchase of House No. 4 erected on LR. NO. 7022/352 (Original No. 7022/166/3) Mushroom Estate, Kiambu County at a purchase price of Kshs. 52,000,000/= . The Applicant secured a loan facility of Kshs. 80,000,000/= from the 1st Respondent and that the principal amount was secured by a Charge over LR NO. 7022/352 (Original No. 7022/166/3) Mushroom Estate, Kiambu County registered in the name of the 1st Respondent. The Applicant has been paying the loan amid covid-19 pandemic. The 3rd Interested P arty entered into a sale agreement with the Applicant for the purchase of House No. 1 erected on the suit property at a purchase price of Kshs. 33,000,000/= which was paid into the Applicant's loan account held with the 1st Respondent. The 1st Respondent was said to be aware of the existence of the Interested Parties on the suit property. Further, he contended that on 20/2/2024, he received the Ninety (90) days statutory notice from the 1st Respondent as well as Forty (40) days' notice for the payment of Kshs. 59,739,066.30. Subsequently, he received the Forty-Five (45) days redemption notice and the amended notice for notification of sale from the 2nd Respondent for Kshs. 61,344,670.95/= . The property's market value was valued at Kshs. 140,000,000/= with the forced value at Kshs. 105,000,000/= . He was issued with a Fourteen (14) days' notice and another notification of sale where the property had been undervalued. The issuance of two Notifications of Sale with different valuation amounts cast a doubt on the whole sale by way of auction process. He stated that it is unlikely that actual valuation of the property was conducted by the 1st Respondent as his independent valuation of the property was a market value of Kshs.156,000,000/= as such the 1st Respondent has failed in its duty to obtain best reasonable price by relying on an erroneous and undervalued assessment. Villa Unit 4 was said to be 100% complete with occupants who have resided on the property for over one year as opposed to the information contained in the advertisement citing 15% completion hence



casting doubt on the integrity of the auction. The said misrepresentation was said to render the auction irregular. The Applicant avers that they are committed to settling the outstanding amount having settled Kshs.55,000,000/=. He deposed that the 1st Respondent has failed to furnish him with a copy of the recent valuation report as well as halting the planned auction. Further, that the 1st Respondent has failed to grant him an opportunity to enable him provide a payment proposal plan. He contended that the sale should not be allowed to stand and should be declared illegal as he stands to suffer irreparable loss

4. Samuel Njuguna filed the replying affidavit dated 18th November, 2024 as the Secured Lending Team Leader-Collections & Recoveries for the 1st Respondent as well as on behalf of the 2nd Respondent. He stated that the loan facility of Kshs. 80,000,000/= was secured by LR No. 7022/352 (Original Number 7022/166/3). Upon the Applicant being in default of the loan, the 1st Respondent issued the Applicant with the three (3) months statutory notice dated 20th February, 2024 and the 40 days' statutory notice dated 24th May, 2024. Following continued default, the 1st Respondent instructed the 2nd Respondent to issue a forty-five (45) day redemption notice and Notification of Sale which were on 23/8/2024. He contended that the property was duly advertised and valued as required by law. The Applicant was said to have failed to honour the undertaking to pay Kshs.22 Million as well as clear the loan by 29/1/2025. Further, it was stated that the bank has no contract with the alleged purchasers as the property was charged free from 3rd party interest. The Applicant was urged to comply with the court order of 14/11/2024 requiring them to pay Kshs.61 Million. The Applicant's suit was said to be an attempt to aid the Applicant avoid its contractual obligations as such the Applicant's application should be dismissed with costs.
5. The application was disposed of by way of written submissions.

Applicant's Submissions

6. The Applicant submits that its constitutional right to property is being threatened by the 1st Respondent's move to exercise its statutory power of sale having undervalued the property. The Applicant was said to have a prima facie case as the valuation conducted did not reflect the actual value of the suit property. Reliance was placed in the case of Mrao Ltd. Vs First American Bank Of Kenya & 2 Others (2003) KLR 125. The Applicant submits that they were issued with two Notifications of Sale with different valuation amounts which casts doubt on the whole sale as no proper valuation was conducted prior to issuance of the notices. The 1st Respondent was said to be relying on an undervalued assessment thereby failing to ensure the best reasonably obtained price so as to protect the right of the Chargor. The sale was also said to be irregular, as there was a significant error in the description of the property which was misleading to prospective bidders. The Applicant submits that if the property is sold at a loss, it would occasion damage to the Applicant thus causing irreparable damage which cannot be compensated by way of damages. Reliance was placed in the case of pius kipchirchir kogo vs frank kimeli tenai (2018) eKLR. Lastly, the balance of convenience was said to tilt in favour of the Applicant as there will be a financial crisis if the Applicant is forced to reimburse monies paid by Interested Parties as the planned auction will cause the eviction of the Interested Parties from their matrimonial homes. Reliance was placed in the case of Chebii Kipkoech Vs Barnabas Tuitoek Bargoria & Another (2019) eKLR. The Court was urged to allow the application with costs.

Respondents' Submissions

7. The Respondents submit that there is no prima facie case the Applicant having admitted the debt as well as the default. The Respondents submit that they have proved service of statutory notices and that the properties have been valued and Valuation Reports produced as such no right has been infringed



by the Respondents. Reliance was placed in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* (2014) eKLR. It was submitted that no consent was sought from the bank so as to sell the property to third parties. The bank was said to have no relationship with the alleged Interested Parties. Reliance was placed in the case of *Innercity Properties Limited vs Housing Finance and another* HC COMM No. E030 of 2020 (2020) eKLR. The charged property was said to have been given voluntarily as security as such the Applicant cannot argue that it will suffer damages if an injunction is not granted. Reliance was placed in the case of *Paul Gatete Wangai & 13 others vs Capital Realty Ltd & another* (2020) eKLR. Lastly, the balance of convenience was said to be in favour of the bank as the outstanding debt is huge and the Applicant has no capacity to pay. Reliance was placed in the case of *China Wu-Yi Company Limited vs Suraya Property Group Limited & 2 others* (2020) eKLR.

Issues For Determination

8. Having considered the application by the Applicant, the replying affidavit and the rival submissions, the main issue framed for determination is whether the Applicant is deserving of the order of temporary injunction sought.

Analysis

9. The law regarding grant of injunctions is found in Order 40 Rule 1 of the Civil Procedure Rules which provide 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;
- (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 order.”

11. The Applicant contends that the Respondents are in the process of selling the suit property by way of an auction.
12. The conditions for grant of interim injunctions are well settled in the case of *Giella v Cassman Brown & Co. Ltd* (1973) E.A 358 where it was held that: -

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. 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 adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

13. The Applicant claims that the bank is aware that the Interested Parties are on the suit property. The Applicant admits to being served with all the statutory notices. He avers that he was served with two notifications of sale which cast doubt to the sale. Further that the bank has refused to issue a recent



valuation report, to halt the auction as well allow the Applicant to provide a payment plan as such the sale should be declared illegal to prevent the Applicant from suffering loss.

14. On its part, the 1st Respondent avers that the Applicant is in default and has been served with the requisite statutory notices. The intended sale has been advertised and the property valued. The bank was said to have no contract with the 3rd parties. The 1st Respondent claims that the Applicant has failed to comply with the court order of 14/11/2024 for the payment of KShs. 61 Million.
15. The Applicant submits to having a prima facie case as the valuation conducted did not reflect the actual value of the suit property.
16. There is need to preserve property that is subject to court proceedings so as to protect the Court from giving orders in vain upon hearing and determining a suit. Order 40, *Civil Procedure Act* gives the court discretion to issue orders which are in the nature of an injunction restraining dealings on property pending further orders by the court.
12. The Court in the instant application is required to satisfy itself that there is a prima facie case established. In the case of *Silvester Momanyi Marube –Vs- Guizar Ahmed Motari & Another (2012) eKLR, Odunga J.* held that:-

“In determining this application, I am well aware that at this stage the court is not required to make any conclusive or definitive findings of fact or law, most certainly not on the basis of contradictory affidavit evidence or disputed propositions of law and that in an application for injunction although the court cannot find conclusively.
12. The Court at this stage is not required to determine the merits and demerits of the Applicant’s claim. The court is only required to determine whether the Applicant has established a prima facie case.
13. The Court of Appeal in *Mrao Ltd vs First American Bank Of Kenya Ltd & 2 others (2003) KLR 125* considered what constitutes prima facie case and held that;-

“In civil cases, a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation of rebuttal from the latter”
12. The Applicant’s main contention is that the suit properties have been undervalued thereby failing to ensure the best reasonably obtained price.
13. The Applicant has admitted to being in default. There is evidence on record that the Applicant was served with all the required statutory notices by the Defendants. What is in dispute is the value of the suit properties as in the valuation report by the parties. The Applicant has also not demonstrated that the bank issued its consent for sale of the properties to 3rd parties so as to plead irreparable loss.
14. Be that as it may, the Applicant having voluntarily offered its property as security for the loan cannot on the other hand claim that it will be in a financial crisis. In any case, any loss incurred by the Applicant can be compensated by way of damages. This court also notes that it previously issued an order dated 14/11/2024 for the payment of KShs. 61 Million which the Applicant has failed to comply and has not shown any efforts its making in the payment of the outstanding amount since this matter was filed.
15. This Court having considered all the issues arising in this application, is not satisfied that the Applicant has demonstrated or established that it has a prima facie case that warrants grant of the order of temporary injunction sought.



16. The outstanding loan continues to accrue causing the bank to suffer irreparable loss as the Applicant is not making any efforts towards the repayment of the loan.
17. The 1st Defendant submits that the Applicant has not established that it has a prima facie case having admitted the debt as well as the default.
18. Furthermore, the 1st Defendant's right to exercise its statutory power of sale crystallized as soon as the Applicant defaulted in its payment and failed to regularize its account as such the only remedy available is for the bank to sell the suit property so as to recover its money.
19. Having found that the Applicant has not established that it has a prima facie case warranting grant of the order of injunction sought, this Court does not find it necessary to dwell on the other conditions to be satisfied before an order of injunction can be granted.
20. Refer to the case of Naftali Ruthi Kinyua vs Patrick Thuita & another (2015) eKLR where the Court of Appeal stated that:-

“with reference to the establishment of a prima facie case, Lord Diplock in the case of American Cyanamid vs Ethicon Limited (1975) AC 396 stated thus:-

‘if there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities that is the end of any claim to an interlocutory relief.’”

Findings And Determination

12. For the forgoing reasons this Court finds the application to be devoid of merit and is hereby dismissed with costs to the Respondents.
13. Mention 9/02/2026 before the Deputy Registrar for pre-trial Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 31ST DAY OF OCTOBER, 2025

A.MSHILA

JUDGE

In the presence of

Sanja – Court Assistant

Njoroge - For the Applicant

Kimani - For the Respondents

Wanjiru – for Interested Parties

