



REPUBLIC OF KENYA



**KENYA LAW**  
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**Standard Chartered Bank Kenya Limited & another v Oluoch (Civil Appeal E208 of 2024) [2025] KEHC 16781 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16781 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E208 OF 2024**

**JM OMIDO, J  
NOVEMBER 13, 2025**

**BETWEEN**

**STANDARD CHARTERED BANK KENYA LIMITED ..... 1<sup>ST</sup> APPELLANT**

**BK.SILA T/A LEGACY AUCTIONEERING SERVICES ..... 2<sup>ND</sup> APPELLANT**

**AND**

**HELLEN AWUOR OLUOCH ..... RESPONDENT**

*(Being an Appeal from the Ruling and Orders of Hon. M.C. Nyigei, Principal Magistrate delivered/issued on 15th October, 2024 in Kisumu CMCC No. E279 of 2024)*

**JUDGMENT**

1. This appeal emanates from the ruling and orders of Hon. M.C. Nyigei, Principal Magistrate delivered on 15<sup>th</sup> October, 2024 4<sup>th</sup> December, 2024 in Kisumu CMCC No. E279 of 2024 Hellen Awuor Oluoch v Standard Chartered Bank Kenya Limited & another.
2. The grounds of appeal presented by the Appellant vide the memorandum of appeal dated 16<sup>th</sup> October, 2024 upon which they seek to upset the ruling and orders of the lower court are that the learned Magistrate fell into error in law and in fact by:
  1. misconstruing, misinterpreting and misapplying the law on interlocutory injunctions as set out in *Giella v Cassman Brown & Co. Limited* [1973] E.A. 358.
  2. acting per incuriam by disregarding binding precedents of the Court of Appeal and the High Court particularly that the issue of interest only goes to the level of indebtedness and the Chargee cannot be restrained from exercising its power of sale merely because the extent of the debt is disputed.
  3. improperly and inadequately evaluating the evidence on record leading to wrong conclusions.



3. The Appellant proposes that the appeal be allowed and that this court sets aside the trial court's orders of 15<sup>th</sup> October, 2025 and substitutes the same with an order of dismissal of the Respondent's notice of motion dated 12<sup>th</sup> August, 2024 with costs. The Appellant also seeks costs of the instant appeal.
4. This being the first appellate court, I am required under Section 78 of the Civil Procedure Act and as was espoused in the case of *Selle v Associated Motor Boat Co. Ltd* [1969] E.A. 123 to reassess, reanalyze and reevaluate the evidence adduced in the trial court and draw my conclusions while bearing in mind that I did not see or hear the witnesses when they testified.
5. In *Selle*, Sir Clement De Lestang observed that:

“This Court must consider the evidence, evaluate it itself and draw its own conclusions, though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect.

However, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”
6. The duty of the first appellate court was also discussed by the Court of Appeal for East Africa in the case of *Peters v Sunday Post Limited* [1958] EA 424 in which it was held that the appropriate standard of review established in cases of appeal can be stated in three complementary principles:
  - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
  - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
  - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
7. The matter before the trial court, based on contract, was commenced by way of an amended plaint dated 14<sup>th</sup> August, 2024, whereby the Respondent (a chargor) who secured a financial facility from the 1<sup>st</sup> Appellant (a chargee) sought to restrain the Appellants from exercising the statutory power of sale over the security Title No. LR Kisumu/Kogony/6544 Kisumu City (the suit property), by seeking the following reliefs:
  - a. A temporary injunction to restrain the Defendants, their agents or servants or any other person acting through their direction or order from selling by public auction and/or in any other manner whatsoever dealing with the property known as Title No. L.R. Kisumu/Kogony/6544 belonging to the Plaintiff pending the hearing and determination of the suit (sic).
  - b. A permanent injunction to restrain the Defendants, their agents or servants or any other person acting through their direction or order from selling by public auction and/or in any other manner whatsoever dealing with the property known as Title No. L.R. Kisumu/Kogony/6544 belonging to the Plaintiff pending the hearing and determination of the suit (sic).



- c. This Honourable Court do grant the Plaintiff relief under Section 103 and 104 of the Land Act or any other appropriate relief by suspending the realization of the security on such terms that are just and for the benefit of both parties.
  - d. A declaration that the unilateral alteration and increase of the interest rates by the 1<sup>st</sup> Defendant contrary to the Banking Act and Central Bank of Kenya Act without the necessary approval of the Minister in charge of Treasury is illegal and such interest charged are unrecoverable.
  - e. A declaration that the intended sale by public auction is premature for failure by the Defendants to adhere to the law by failing to serve the Plaintiff with the necessary statutory notice as required in law.
  - f. Costs of this suit.
  - g. Any other award that the court may deem fit, just and expedient in the circumstances to award.
8. It is not clear to me whether the Appellants filed (a) defence(s) to the Respondent's claim as there is none in the record of appeal.
  9. Be that as it may, the Respondent filed before the trial court an application by way of an amended notice of motion dated 14<sup>th</sup> August, 2024, in which she sought the following orders:
    - a. ....
    - b. ....
    - c. That pending the hearing and determination of this suit, this court be pleased to issue an order of temporary injunction restraining the Defendants/Respondents whether by themselves, their servants, agents and/or employees or whomsoever is acting on their behalf from advertising for sale, selling by public auction, transferring or disposing of Title No. L.R. Kisumu/Kogony/6544 Kisumu City, Kisumu County belonging to the Plaintiff/Applicant.
    - d. That this Honourable Court do grant the Plaintiff/Applicant relief under Section 103 and 104 of the Land Act or any other appropriate relief by suspending the realization of security by way of sale by public auction of the Plaintiff's charged property being Kisumu/Municipality Block 6/283 (sic) within Kisumu County for such period as shall be appropriate to enable the Plaintiff comply with the terms of the first legal charge registered against the suit property registered (sic) in 2019 or such other relief or reliefs that the court deems appropriate in the circumstances.
    - e. That this Honourable Court be pleased to make any other orders as it deems fit.
    - f. That costs of this application be provided for.
  10. The grounds upon which the application was premised were in precis that the Respondent who was an employee of the 1<sup>st</sup> Appellant, applied for and was granted by the 1<sup>st</sup> Appellant a financial facility of Ksh.4,500,000/- which was secured by a legal charge over the suit property and that the Respondent continued paying the agreed instalments as and when they fell due until the 1<sup>st</sup> Appellant unlawfully terminated her contract of employment thereby making it impossible for the Respondent to continue making payments.
  11. The Respondent's other ground was that the 1<sup>st</sup> Appellant failed and/or neglected to serve upon her the necessary statutory notices that were a legal requirement before the exercise of the 1<sup>st</sup> Appellant's statutory power of sale.



12. The Respondent further raised in her affidavit the ground that the interest that the 1<sup>st</sup> Appellant charged on the loans was illegal as the same was way above the contractual rates.
13. The application was supported by the Respondent's affidavit in which she expounded on the above grounds.
14. The application was resisted by the 1<sup>st</sup> Appellant, who to that end filed a replying affidavit sworn on 26<sup>th</sup> August, 2024 by the 1<sup>st</sup> Appellant's Manager in the Collections and Recoveries Unit Boniface Machuki (hereinafter referred to as Machuki).
15. In his affidavit, Machuki stated that on 31<sup>st</sup> May, 2017, the Respondent applied for and was issued with a mortgage facility by the 1<sup>st</sup> Appellant of Ksh.4,500,000/- and that the said amount was disbursed to the Respondent on 18<sup>th</sup> October, 2018. That further, on 31<sup>st</sup> August, 2022, the Respondent applied for and was granted by the 1<sup>st</sup> Appellant a personal loan facility of Ksh.2,700,000/-, which amount was disbursed on 31<sup>st</sup> August, 2022.
16. Machuki further stated in his affidavit that it was a term of the letter of offer that the Respondent would offer the suit property as security for repayment of the loan facility and that consequently, by way of a legal charge dated 26<sup>th</sup> September, 2017, the Respondent charged the suit property to the 1<sup>st</sup> Appellant as security for the repayment of the loan facilities.
17. The said deponent stated that the Respondent defaulted in the repayment of the agreed instalments inclusive of the contractual interest pursuant to which the 1<sup>st</sup> Appellant embarked on exercising its statutory power of sale and served the requisite statutory notices to that end.
18. Machuki annexed to his affidavit the two letters of offer, a copy of the charge, copies of the Respondent's account statements, a 14-days demand letter dated 9<sup>th</sup> August, 2023, a 3-months statutory notice dated 18<sup>th</sup> September, 2023, a 40-days statutory notice dated 22<sup>nd</sup> January, 2024 and a 45-days redemption notice dated 31<sup>st</sup> May, 2024, all of which he stated were served upon the Respondent to her last known postal address – P.O. Box 4654-00200 Nairobi – and her last known email address hellen.obade@gmail.com, both of which the Respondent provided in the letter of offer and the charge document.
19. In his affidavit, the said deponent stated that following the default by the Respondent, which amounted to a breach of contract, the 1<sup>st</sup> Appellant was within its rights to realize the security by exercising its statutory power of sale. The 1<sup>st</sup> Appellant was therefore of the inclination that the application did not meet the legal threshold for granting injunctive relief.
20. The application before the trial court was canvassed by way of written submissions and the learned trial Magistrate set out these two issues for determination:
  - a. Whether the Applicant has fulfilled the grounds for injunction to warrant a grant of the orders.
  - b. To whom should costs be awarded to.
21. In her ruling rendered on 15<sup>th</sup> October, 2024, the learned trial Magistrate reached the findings that the Respondent willingly offered the suit property as security and that the same became "a commodity for sale" upon default in repayment of the instalments and that as a matter of fact, she was in default in repaying the loans that she was advanced by the 1<sup>st</sup> Appellant. The trial court further found that all the requisite notices were served by the 1<sup>st</sup> Appellant upon the Respondent.



22. The learned trial Magistrate, in addressing the issue raised by the Respondent that the 1<sup>st</sup> Appellant had levied interests on the loans that were above the contractually agreed rates, observed that the 1<sup>st</sup> Appellant did not respond to that claim.
23. Ultimately, in determining whether the conditions for granting injunctive relief had been met by the Respondent, the trial court reached the following findings:
  - a. That the Respondent had successfully demonstrated a prima facie case with probability of success as the allegation on the excess interest had not been controverted by the 1<sup>st</sup> Appellant.
  - b. That the Respondent had failed to demonstrate that she would suffer irreparable loss which cannot be compensated by an award of damages as she had willingly offered her property as security and that she had subsequently defaulted on repaying the loans. An award of damages would therefore adequately recompense her.
24. The trial court thus concluded that as the Respondent had established a prima facie case with probability of success, her quest for injunctive relief was merited and allowed the application in the following terms:
  1. That pending the hearing and determination of this suit, an order of temporary injunction is hereby issued restraining the Defendants/Respondents whether by themselves, their servants, agents and/or employees or whomsoever is acting on their behalf from advertising for sale, selling by public auction, transferring or disposing off land parcel Kisumu/Kogony/6544 belonging to the Plaintiff/Applicant.
  2. Costs to be in the cause.
25. It is the above orders that are challenged vide the instant appeal.
26. This court directed that the appeal be canvassed by way of written submissions and both sides complied by filing their respective submissions.
27. I have perused and considered the record of appeal, the submissions by the two sides and the record of the trial court and the issues that emerge for this court to address and determine are as follows:
  - a. Whether the trial court reached the proper finding in granting an injunction pending the hearing and determination of the suit, on the ground that the challenge on the interest rates charged on the loans amounted to a prima facie case with a probability of success.
  - b. A determination as to costs.
28. I will proceed to address the two issues seriatim.
29. The conditions for the grant of an interlocutory injunction are, first, that an Applicant must show a prima facie case with a probability of success; secondly, that an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury; and when the court is in doubt, it will decide an application on the balance of convenience.
30. The principles are applied sequentially, not conjunctively — but both the prima facie case and irreparable harm principles must be established before the court considers the balance of convenience principle, which is only applicable when the court is in doubt. In other words, one cannot rely on one alone; proving one without the other is not sufficient.



31. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & others* [2014] eKLR clarified the correct approach as follows:

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements to:

1. establish his case only at a prima facie level,
2. demonstrate irreparable injury if a temporary injunction is not granted, and
3. allay any doubts as to (1) and (2) by showing that the balance of convenience is in his favour.”

32. The court emphasized that these conditions are not to be applied as alternatives, but rather as separate but sequential hurdles. The court rendered itself as follows:

“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 Applicant will suffer, in the event the injunction is not granted, will be irreparable. If the court is in doubt, it will determine the matter on a balance of convenience.”

33. This court has carefully considered the appeal against the ruling of the learned trial Magistrate that granted an interlocutory injunction in favour of the Respondent. It is not in dispute that the learned trial Magistrate found the existence of a prima facie case with a probability of success but expressly held that the Respondent had not demonstrated that she would suffer irreparable harm incapable of being compensated by damages. Despite that finding, the court nonetheless proceeded to grant the injunction.

34. Thus then, with regard to the first issue that I have set out above for determination, which is whether the trial court reached the proper finding in granting an interlocutory injunction pending the hearing and determination of the suit on the sole ground that the challenge on the interest rates charged on the loans amounted to a prima facie case with a probability of success, the question for determination is whether, in the absence of proof of irreparable injury, the grant of an injunction was justified in law.

35. As we have seen above, the principles governing the grant of interlocutory injunctions are well settled in *Giella v Cassman Brown* (supra). The principles were restated and clarified by the Court of Appeal in *Nguruman* (supra).

36. In *Nguruman*, the court held that the conditions are sequential and not to be applied as alternatives. The court held that the Applicant must first establish a prima facie case, then demonstrate that he stands to suffer irreparable injury if the injunction is not granted; and only when the court is in doubt does it consider the balance of convenience.

37. The court emphasized that:

“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 Applicant will suffer... will be irreparable.”

38. Applying that principle to the present case, once the learned trial Magistrate found that no irreparable harm would result, the foundation for granting an injunction automatically collapsed.



39. Notably, the Respondent herein has not challenged the trial court's finding that she did not demonstrate that she stands to suffer irreparable injury that cannot be compensated by an award of damages if the interlocutory injunctive relief is not granted.
40. The subsequent grant of the order, despite that finding, amounted to a misdirection in law and a clear misapplication of the Giella and Nguruman principles.
41. Accordingly, this Court finds merit in the appeal. The order issued on 15<sup>th</sup> October, 2024 granting an injunction pending the hearing and determination of the suit before the trial court is hereby set aside, and substituted with an order that the Respondent's amended notice of motion dated 14<sup>th</sup> August, 2024 for interlocutory injunction is dismissed with costs to the Appellant.
42. With respect to the second issue for determination, which is costs of the appeal, Section 27 of the Civil Procedure Act dictates that costs ought to follow the event. As the Appellants are the successful parties, the Respondent shall bear the costs of the appeal, which I assess at Ksh.20,000/-, noting that the same was interlocutory in nature.
43. This file is hereby closed.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**JOE M. OMIDO**

**JUDGE**

For Appellant: Mr. Mwangi for Mr. Karanja.

For Respondent: Mr. Yogo for Mr. Ojuro.

Court Assistants: Mr. Juma & Mr. Ngoge.

