Gachanja & another v Housing Finance & another (Civil Suit E431 of 2019)
[2025] KEHC 17365 (KLR) (Civ) (25 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17365 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL

CIVIL SUIT E431 OF 2019

MA OTIENO, J

NOVEMBER 25, 2025

BETWEEN

WILSON KIRUNGIE GACHANJA ..... 1ST PLAINTIFF

JOSEPHINE WANJIRU GACHANJA ..... 2ND PLAINTIFF

AND

HOUSING FINANCE ..... 1ST DEFENDANT

GARAM INVESTMENTS AUCTIONEERS ..... 2ND DEFENDANT

JUDGMENT

Introduction

1. This is a dispute arising from two loan facilities advanced by the 1st Defendant to the Plaintiffs, secured by Apartment A3 and Apartment B1, respectively.

2. The Plaintiffs, via Amended Plaint dated 27 August 2024, challenge the lawfulness of interest variations, the validity of statutory notices, the application of payments, and the accuracy of the loan accounts. They seek injunctive relief, declarations on the illegality of notices and interest increases, an order for taking of accounts, refund of charges, and damages.

3. The Defendants, through a Further Amended Statement of Defence dated 23 September 2024, maintain that the Plaintiffs were in default; that interest variations were lawful, or in fact reductions beneficial to the Plaintiffs; that statutory notices were validly issued and upheld, and that accounts have been reconciled with penalty interest reduced to 13%, leaving no accounting issue pending. The Defendants seek dismissal of the suit and recognition of their statutory power of sale.

Background of the Dispute

4. The facts leading to this dispute are that by Letters of Offer dated 12th April 2010 (Apartment B1) and 27th December 2011 (Apartment A3), the 1st Defendant advanced loan facilities of Kshs. 12,000,000 and Kshs. 9,100,000 respectively. The facilities were secured by Charges dated 23rd August 2012 (B1) and 24th April 2012 (A3). Contractual monthly instalments were indicated at approximately Kshs. 190,240 (B1) and Kshs. 192,244 (A3).

5. On 18th and 21st February 2019, the Bank issued 90-day statutory notices alleging arrears of Kshs. 593,043 (B1) and Kshs. 307,298 (A3), followed by 40-day notifications of sale (19th July 2019) and auctioneer's 45-day notices (October/November 2019) claiming arrears of Kshs. 1,957,916.90 (B1) and Kshs. 1,120,951.60 (A3).

6. The Plaintiffs paid Kshs. 2,000,000 (November 2019, A3) and Kshs. 2,500,000 (December 2019, intended for B1) to forestall the auction, then filed suit in November 2019 for injunctive relief and accounts. On 3rd December 2019, by consent, they were ordered to pay Kshs. 2,500,000 within seven days; the auction was suspended. On 15th February 2021, the Court granted a 90-day injunction, directed parties to amicably resolve applicable interest or engage auditors, and deemed statutory notices valid as to service and suspended for 90 days.

7. In 2022–2023, negotiations culminated in the Bank producing a manual computation "based on letter of offer rates," omitting the 26% penalty rate and retaining 13% interest on arrears, reversing over Kshs. 3,318,4873.16previously charged. Discussions were also held on the sale of A3; a 10% deposit of Kshs. 1,600,000 was paid, and a draft sale agreement was exchanged. The sale later stalled.

8. On 6th March 2024, upon review, the Court set aside the earlier finding on validity (beyond service) and granted an unconditional injunction restraining sale pending determination of the suit. As pointed out above, the parties filed further amended pleadings in August/September 2024.

The Evidence

Plaintiffs' evidence

9. The 1st Plaintiff, Wilson Kirungie Gachanja, testified on behalf of the Plaintiffs as PW1 and adopted his witness statement of 26 March 2024 as evidence in chief. He also produced documents in the list of documents dated 27 August 2024 as evidence in support of the Plaintiffs' case. He testified that the statutory notices were issued when loans were not in arrears; payments were ahead of amortization schedules; interest was unilaterally increased, including 26% on arrears without notice; auctioneers' fees, valuation, legal costs, and other recovery charges were debited and compounded; and Kshs. 2,500,000 paid in December 2019 for B1 was misapplied to A3 despite clear instructions.

10. PW1 emphasized that the Plaintiffs initially relied on the Bank's statements and believed the loans were in arrears, only discovering inaccuracies and non-compliant interest application after institution of the suit, inquiry, and audit. He pointed to the Bank's own manual computation reversing Kshs. 3,318,487.16 as partial admission of previous overcharging. He identified "resolved issues" (rates reverted to letter of offer rates/13% arrears) and "unresolved issues" (daily cleared balances not used; 360-day year applied; default interest on non-existent arrears; illegal charges; misapplication of the Kshs. 2.5M payment).

11. In cross-examination, PW1 maintained that the loans were ahead of schedule and that earlier admissions of default were based on innocent reliance on inaccurate bank statements. He confirmed

the payments of Kshs. 2M (A3) and Kshs. 2.5M (B1) were made to stop auctions and clear alleged arrears.

12. The Plaintiffs also called in an expert witness, Jephiter Onyari Bosire, an Auditor (PW2) (the auditor), who produced an audit report (July 2024). He concluded the loans were performing ahead of schedule; interest was not calculated on daily cleared balances or a 365-day year; default interest was charged despite no arrears; and balances were exaggerated.

13. On cross-examination, he stated that he was unable to determine the exact applicable interest rate and advised that the disputed legal issues (e.g., the authority to vary interest variation and recovery charges) be determined first to set parameters before proper accounts are taken.

14. He confirmed that the Plaintiffs paid his fee (Kshs. 1,334,000) for the audit. The witness was recalled later and produced his practicing certificate.

Defendants' evidence

15. The Defendant's sole witness, DW1 (Emmanuel Yebei), a debt management officer, adopted his statement dated 27 June 2024 as his evidence in chief. He also produced in evidence the documents in the List of Documents of even date in support of the defence. The witness told Court that interest reductions benefited the Plaintiffs; no unlawful increases occurred; subsequent adjustment to 13% arrears was ex gratia and in good faith. He stated auctioneer's fees and recovery costs were contractually chargeable; and the December 2019 Kshs. 2.5M was credited to A3 in line with the court order suspending the auction.

16. In cross-examination, DW1 admitted that while reductions were notified, interest on arrears was increased to 26% without notice. He also admitted the loans were performing ahead of schedule at the time of statutory notices, attributable to rate reductions and lump-sum payments. He maintained that the Bank treated any missed monthly instalment as arrears irrespective of accelerated payments. He conceded that the November/December 2019 payments cleared the alleged arrears, and that the consent order did not specify allocation of Kshs. 2.5M to A3. He admitted the manual computation applied monthly balances rather than daily cleared balances and used a 360-day year.

Parties' submissions

Plaintiffs' submissions

17. The Plaintiffs submitted that the loan accounts were not in arrears at the time the statutory notices were issued. They argue that lump sum payments and reduced instalments placed the accounts ahead of schedule, and therefore, the notices were unlawful. They rely on Robert Mugo Wa Karanja v Ecobank (Kenya) Ltd [2019] eKLR, where the Court held that a bank which fails to provide consistent statements of account cannot sustain a claim of arrears, and that borrowers are entitled to accurate records of indebtedness.

18. On interest variation, the Plaintiffs contend that the 1st Defendant arbitrarily increased interest rates, particularly imposing 26% on arrears, without notice and contrary to the Letters of Offer, the Charge instruments, Section 84(1) of the *Land Act*, and Section 44 of the *Banking Act*. They rely on Ezekiel Osugo Angwenyi v NIC Bank Ltd [2017] eKLR, where the Court frowned upon banks that vary interest rates without proper notice, holding that such conduct renders the debt indeterminate. They also cited the Supreme Court decision in Stanbic Bank Kenya Ltd v Santowels Ltd [2024], which affirmed that Section 44 of the *Banking Act* requires ministerial approval for any increase in banking charges.

19. The Plaintiffs further submitted that the sum of Kshs. 2,500,000 paid in December 2019 was misapplied to Apartment A3 instead of Apartment B1, contrary to their clear instructions. They argue this misapplication was deliberate and intended to create the impression of default. They rely on Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, where the Court emphasized that a bank must act in utmost good faith in the application of payments, and any misapplication undermines the borrower's rights.

20. On statutory notices, the Plaintiffs argued that the notices were invalid, being premised on exaggerated balances. They note that the Court's ruling of 6th March 2024 reviewed and set aside the earlier finding of validity, and granted an unconditional injunction. They rely on Trust Bank Ltd v Eros Chemists Ltd [2000] eKLR, where the Court held that statutory notices must be based on accurate and lawful demands, failing which they are invalid. They also cite Basil Criticos v National Bank of Kenya Ltd (Civil Appeal No. 80 of 2017), where the Court of Appeal emphasized strict compliance with statutory notice requirements.

21. The Plaintiffs relied on the evidence of their expert witness (PW2), who confirmed that the loans were performing ahead of schedule and that interest was wrongly applied. They submit that this evidence corroborates their case and discredits the Bank's statements. They cite Kenya Akiba Microfinance Ltd v Ezekiel Chebii & 14 others [2012] eKLR, where the Court recognized the probative value of expert evidence in establishing whether accounts were properly maintained.

22. They deny that any binding agreement was reached during negotiations in 2022–2023, insisting that they disputed the balances in their letters of October 2023. They argue that the attempted sale of Apartment A3 was a separate matter and does not amount to estoppel. They rely on Nurdin Bandali v Lombank Tanganyika Ltd [1963] EA 304, where the Court held that equitable estoppel requires a clear and unequivocal representation, which was absent in this case.

23. The Plaintiffs therefore urged this Court to grant a permanent injunction restraining the sale of the charged properties, an order for accounts to be taken, a refund of illegal charges, and damages for breach of contract. They rely on Giella v Cassman Brown & Co. Ltd [1973] EA 358, the leading authority on injunctions, arguing that they have established a prima facie case, irreparable harm, and balance of convenience in their favour. The Plaintiffs also cite Nguruman Ltd v Jan Bonde Nielsen & 2 others [2014] eKLR, where the Court of Appeal reaffirmed that irreparable harm includes loss of property rights not compensable by damages.

Defendants' submissions

24. The Defendants, on their part, submitted that the Plaintiffs obtained two loan facilities secured by Apartments A3 and B1, and that the Letters of Offer expressly permitted variation of interest. They argue that the variations effected were lawful, and in fact reductions which benefited the Plaintiffs. They rely on National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR, where the Court held that parties are bound by the terms of their contract and cannot later challenge agreed interest variations.

25. On default, the Defendants contended that the Plaintiffs failed to meet their monthly instalments, and that any missed instalment constituted arrears regardless of lump sum payments. They cite Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR 125, where default was defined as failure to meet contractual obligations, entitling the lender to enforce its security.

26. The Defendants maintained that statutory notices were validly issued under the *Land Act*, and that this Court (Muigai J, 15th February 2021) upheld their validity. They argue that the Plaintiffs cannot now

challenge them. They rely on Collogne Investments Ltd v KCB Bank Kenya Ltd; Nakumatt Holdings Ltd (Under Administration) [2020] eKLR, where the Court held that once default is admitted, the bank's right to realize its security is unimpeachable.

27. Regarding the issue of payments, the Defendants submit that the sum of Kshs. 2,500,000 paid in December 2019 was properly credited to Apartment A3 in line with the Court's order suspending the auction. They rely on Habib Bank AG Zurich v Pop-In (Kenya) Ltd & others [1990] KLR 609, where the Court emphasized that payments made pursuant to court orders must be applied in accordance with those orders.

28. The Defendants argued that reconciliation was already done voluntarily, adopting 13% interest on arrears, and that no accounting issue remains. They submit that the Plaintiffs refused the appointment of an independent auditor, and cannot now seek further accounts. They rely on Kenya Commercial Bank Ltd v Osebe [1982] KLR 296, where the Court held that a borrower who declines reconciliation cannot later demand accounts.

29. On negotiations, the Defendants contended that the parties reached an agreement on balances in March 2023, and that the Plaintiffs even initiated a sale of Apartment A3. They argue that the Plaintiffs are estopped from denying the agreed debt. They rely on Fredrick Owino t/a Cool & Smartech Agencies v Board of Management Kamuriai Sec. School [2021] eKLR, affirming that equitable estoppel arises where a party makes a representation acted upon by the other.

30. The Defendants dismiss the Plaintiffs' expert witness (PW2) as unreliable, contending that he failed to compute balances, admitted uncertainty, and acted as a "hired gun." They rely on Republic v Chief Magistrate, Milimani Criminal Division & 4 others Ex-Parte John Wachira Wambugu & another [2018] eKLR, where Justice Mativo cautioned against experts whose reports lack independence and objectivity.

31. Finally, the Defendants pray that the suit be dismissed with costs, and that they be allowed to exercise their statutory power of sale to recover the outstanding balances. They rely on Giella v Cassman Brown & Co. Ltd [1973] EA 358, arguing that the Plaintiffs have not met the threshold for injunctive relief, as the debt is admitted and default established.

Analysis and Determination

32. Having duly considered the pleadings, the evidence adduced, and the rival submissions together with the authorities cited, the Court is of the view that the following issues arise for determination: -

    i. Whether the 1st Defendant lawfully varied the interest rates on the loan facilities;

    ii. Whether the Plaintiffs were in default at the time the statutory notices were issued;

    iii. Whether the loan accounts were accurately maintained and whether the prayer for taking of accounts is merited.

    iv. What remedies, if any, are available to the Plaintiffs

Whether the interest variation was lawful

33. The Plaintiffs alleged that the 1st Defendant arbitrarily increased interest rates, particularly imposing 26% on arrears, without notice and contrary to the Letters of Offer, the Charge instruments, Section 84(1) of the *Land Act*, and Section 44 of the *Banking Act*.

34. The Defendants, on their part, maintain that variations were lawful and were in fact reductions which benefited the Plaintiffs.

35. From a review of the evidence on record, the Court notes that the Defendants' own manual computation reversed Kshs. 3,318,4873.16, prima facie evidence that earlier charges were inconsistent with contractual terms. DW1, under cross-examination, admitted that while reductions were notified, interest on arrears was increased to 26% without notice. In Ezekiel Osugo Angwenyi v NIC Bank Ltd [2017] eKLR, the Court held that arbitrary variation of interest without notice renders the debt indeterminate.

36. Similarly, the Supreme Court in Stanbic Bank Kenya Ltd v Santowels Ltd [2024] affirmed that Section 44 of the *Banking Act* requires ministerial approval for any increase in banking charges. The Supreme Court in the Stanbic Bank Case (supra) stated that: -

> " 66. Based on our analysis and finding with respect to section 44 of the *Banking Act*, the provision plays a different regulatory role yet complementary to that which capped interest rates played. By requiring bank/financial institutions to seek approval of the Cabinet Secretary prior to increase of interest rates, it ensures that there is some check and balance or oversight to ensure that consumers of the loan facilities are not exploited, and that the rates are reasonable. This is quite evident from the Banking (Increase of Rate of Banking and Other Charges) Regulations, Legal Notice No 34 of 2006, formulated in relation to section 44 of the *Banking Act*. The regulations set out the procedure of seeking the approval envisioned thereunder as well as the process of considering such an application. It provides an elaborate process involving the Governor of CBK and the Cabinet Secretary who are better placed to tell whether the proposed interest rates are in line with the government's policy and the inflation rate amongst other necessary considerations. To hold otherwise as the appellant invites us to do, that is, that interest rates on loans/facilities are completely liberalised and not subject to regulation would be an interpretation that is contrary to the objective of the *Banking Act*. Furthermore, our finding is supported by the decision of this Court in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others, SC Petition No 26 of 2014; [2014] eKLR, where we opined that a purposive interpretation should be given to statutes so as to reveal the intention of the Legislature and the Statute itself."

37. In the circumstances, and guided by the above authorities, it therefore follows that the Bank's unilateral imposition of 26% arrears interest without notice was unlawful. Only rates expressly provided in the Letters of Offer and lawfully varied with notice are enforceable. Any balances derived from unlawful rates must be disregarded.

Whether the Plaintiffs were in default when the statutory notices were issued

38. The Plaintiffs argued that lump sum payments placed the loans ahead of schedule, hence no arrears existed when statutory notices were issued.

39. The Defendant, on its part, contends that any missed instalment constituted arrears.

40. The evidence of PW2, which was not materially controverted by the defence, demonstrates that the loan balances were ahead of schedule, thereby indicating that the accounts were not, in substance, in arrears. This position was further corroborated by DW1, who, under cross-examination, candidly

conceded that, taken globally, the loans were ahead of schedule, notwithstanding the fact that certain monthly instalments had been missed.

41. The Defendant's contention that a default may be declared, and securities realized, merely because a few instalments were missed, even in circumstances where the borrower had made excess lump sum payments on the facility (as in the case herein), while legally and contractually permissible, is inequitable. The Court is persuaded that equity regards substance rather than form, and that a creditor who has received payments in excess of scheduled obligations cannot fairly invoke default provisions to defeat the borrower's overall compliance.

42. Existing jurisprudence supports this approach. In National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR, the Court of Appeal emphasized that while parties are bound by their contracts, equitable principles may temper strict enforcement where such enforcement would occasion manifest unfairness.

43. This Court holds the view that where lump sum payments place a borrower ahead of schedule, as is in the present case, technical defaults should not be weaponized to prematurely enforce securities. The Defendant's reliance on missed instalments, in the face of substantial overpayments, amounts to an inequitable exercise of contractual rights. Equity will not permit a party to insist on strict legal rights, where doing so would result in unjust enrichment or oppression.

44. The other issue that may have contributed to the alleged default is how the Kshs. 2,500,000/- lump sum payment made by the Plaintiff in December 2019 was applied. The Plaintiffs contend that their clear instructions were that the amount was to be credited to the B1 loan account, which was the facility under immediate threat of realization. The 1st Defendant, however, applied the payment to the A3 account, contrary to those instructions. DW1 admitted this fact, but sought to justify the allocation on the basis of a court order suspending auction proceedings in respect of Apartment A3.

45. The argument by the Defendant is untenable. I have keenly perused the Ruling by the Court (M.W. Muigai J) of 15th February 2021 and the resultant Court Order, and note that the said court order suspending the auction did not expressly mandate allocation of funds to A3. The Bank's unilateral decision to override the borrower's instructions was therefore a breach of contractual and fiduciary duty.

46. It therefore follows that the Kshs. 2,500,000 payment was wrongfully misapplied to Apartment A3 instead of B1. The payment must therefore be re-credited to the B1 account, and both accounts reconstructed accordingly.

47. The Court having found that the accounts were inaccurately maintained and that the arrears were artificially created (by the use of a 360-day year instead of 365; the imposition of 26% arrears interest without notice contravened statutory and contractual provisions; recovery and auctioneer charges were debited despite invalid statutory notices; and the misapplication of the Kshs. 2.5 million lump sum payment created artificial arrears in the B1 account; it therefore follows that any statutory notices and attempts to exercise the statutory power of sale were invalid and unenforceable.

48. Accordingly, I hold that the statutory notices issued in February and July 2019 were invalid.

Whether the Loan Accounts were properly kept, and the need, if any, for accounts

49. The Plaintiffs challenged the accuracy of the loan accounts maintained by the 1st Defendant, pointing to methodological flaws in the computation of interest, misapplication of payments, and unlawful debiting of charges.

50. The Plaintiffs' expert witness (PW2) demonstrated that the accounts were not calculated on daily cleared balances, that a 360-day year was used instead of 365, and that unlawful default interest and recovery charges were compounded into the balances. DW1, the Defendants' debt officer, conceded several of these practices, including the use of monthly balances and the reversal of over Kshs. 3 million after manual recomputation.

51. DW1's admission that over Kshs. 3 million was reversed after manual recomputation is a clear acknowledgment of systemic inaccuracies. PW2's audit corroborated these flaws, and contrary to the 1st Defendant's assertions, this Court finds his (PW2) evidence credible and probative. It therefore follows that the accounts, as presented by the Defendants, cannot be relied upon to establish lawful indebtedness.

52. The Plaintiffs' "unresolved issues" include:

    i. interest calculated on monthly balances rather than daily cleared balances;

    ii. use of a 360-day year instead of the contractual 365-day year;

    iii. charging default interest despite non-existent arrears; and

    iv. debiting recovery/legal costs to the loan accounts and compounding interest on them.

    v. debiting the loan accounts with auctioneers' charges and legal costs

53. DW1 admitted use of monthly balances and a 360-day year and acknowledged that higher interest would result from a lower denominator.

54. The Bank's manual computation reduced balances by omitting the 26% penalty rate and retaining 13% arrears interest, but did not address the daily-balance method or the 365-day year. Nor did it resolve the propriety of recovery charges given the invalidity of the notices.

55. The Plaintiffs' recalculations and the Auditor's report raise credible doubts on the accuracy that the Bank did not substantively rebut in correspondence or testimony, beyond characterizing adjustments as good faith concessions.

56. The Defendants rely on negotiations culminating in March 2023 emails, deposit of Kshs. 1.6M, draft sale agreement for Apartment A3, and a consent enabling sale, to assert an agreed amount payable and estoppel. The Plaintiffs, on their part, produced letters of 21st October 2023 disputing balances and asserted that the sale collapsed and that there was no executed settlement agreement on balances.

57. The doctrine of estoppel is contained in Section 120 of the *Evidence Act* which provides as follows:

> "When one person has by his declaration act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

58. In Diamond Trust Bank Kenya Ltd V Said Hamad Shamiyi & 2 others (2015) eKLR, the Court of Appeal adopted the following treatise by the Authors of ODG & ERs on Pleadings & Practice, 20th Edition (1971) on the circumstances which should prevail for the doctrine of estoppel to be invoked:

> "An estoppel must always be specially pleaded unless it appears on the face of the adverse pleading, when it is ground for an objection on a point of law. A plea for estoppel must always be drafted with great care and particularity. It must state in full detail the facts on

which the party pleading it relies on as constituting the estoppel, and should also specify the allegations which it is contended the other party is precluded from disapproving."

59. Lord Denning M R in the case of D & C Builders V Sidney Rees (1966) 2QB 617 stated as follows:

> "It is the first principle upon which all courts of equity proceed, who have entered into definite and distinct terms involving certain legal results, afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or be kept in suspense, or held in any event, the person who otherwise might have enforced those rights will not be allowed to enforce them when it would be inequitable having regard to the dealings which have taken place between the parties."

60. I have carefully examined the correspondence between the parties on the failed sale of Apartment A3 and note that it did not create a crystallized estoppel regarding accounting disputes. Estoppel requires a clear and unequivocal representation, intended to be relied upon, and reliance to detriment. Here, the Plaintiffs' continuing dispute on computation parameters and balances undermines any assertion of clear representation. The communications between the parties herein, in my view, indicate efforts to resolve, rather than an unequivocal acceptance of the indebtedness figures.

61. Consequently, on the evidence in record, the Court finds that no binding agreement on balances was reached. Estoppel does therefore not arise. The failed sale does not create a crystallized estoppel regarding accounting disputes

62. Accordingly, a formal taking of accounts is necessary under judicial supervision, applying the contractual method (daily cleared balances; actual days in a 365-day year; monthly rests), lawful rates, and excluding unlawful default interest and improper recovery charges.

What remedies, if any, are available to the Parties?

63. The Plaintiffs seek a permanent injunction, an order for accounts to be taken, a refund of unlawful charges, and damages.

64. The Defendants, on their part, seek dismissal and enforcement of securities.

65. The principles guiding injunctions are well settled. In Giella v Cassman Brown [1973] EA 358, the Court set out the test for interlocutory injunctions. For permanent injunctions, the Court of Appeal in Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib [2018] eKLR held that such relief issues after trial, upon proof of infringement of rights. In lending disputes, permanent injunctions may be granted where statutory notices are invalid or no lawful arrears exist.

66. In the present case, the Plaintiffs have proved unlawful interest variation, misapplication of payments, inaccurate accounts, and invalid notices. They have therefore established substantive rights warranting protection. In Nguruman Ltd v Jan Bonde Nielsen [2014] eKLR, irreparable harm was defined to include loss of property rights not compensable by damages. The threatened sale of Apartments A3 and B1 would extinguish the Plaintiffs' equity of redemption, a harm that cannot be adequately remedied by monetary compensation.

67. On accounts, the equitable jurisdiction of the Court is apt. In Robert Mugo Wa Karanja v Ecobank (Kenya) Ltd [2019] eKLR cited by the Plaintiffs, the Court held that banks must keep proper records, and where accounts are disputed, judicially supervised reconciliation is necessary.

68. On restitution, the Court finds that in view of the unlawful charges and the inaccuracies in the two loan accounts, the Plaintiffs are entitled to a refund of unlawful charges debited to their accounts, including recovery, legal, auctioneer, and valuation fees, as well as reimbursement of audit costs. However, the precise sums refundable can only be determined upon completion of the reconciliation exercise.

69. In the premises, I find that the Plaintiffs are entitled to a permanent injunction restraining the sale of the charged properties, an order for accounts to be taken under Court supervision, and restitution of unlawful charges.

70. The Defendants' prayers for dismissal and enforcement of securities fail.

71. Accordingly, I hereby issue the following orders:

    i. A permanent injunction restraining the 1st and 2nd Defendants, their agents or servants, from selling, advertising, alienating, disposing of, or in any way interfering with Apartment A3 and Apartment B1 pursuant to the statutory notices issued in 2019, pending completion of the accounting exercise and further orders of the Court.

    ii. A declaration that increasing arrears interest to 26% without notice and contrary to contractual/statutory requirements was unlawful, and any balances computed using such rate are invalid.

    iii. A declaration that the statutory notices of 18th and 21st February 2019, premised on exaggerated balances and non-existent arrears, are invalid for purposes of exercising statutory power of sale.

    iv. Accounts of both loan facilities shall be taken under Court supervision on the following parameters:

        a. Method: Interest calculated on daily cleared balances, actual number of days on a 365-day year, compounded on monthly rests, in accordance with the Letters of Offer and Charges.

        b. Rates: Letter-of-offer rates as lawfully adjusted by properly notified reductions/increases and any applicable statutory caps; no default interest shall be applied for periods where the accounts were substantiated to be ahead of schedule and not in arrears.

        c. Exclusions: Exclude and/or refund unlawful default interest, recovery/legal/auctioneer/valuation charges debited pursuant to invalid statutory notices and threatened auctions; exclude compounding of interest on such charges.

        d. Payment allocation: Re-credit Kshs. 2,500,000 (December 2019) to the B1 account as instructed in the Plaintiffs' letter, and reconstruct both accounts accordingly.

        e. Procedure for accounts:

            i. Within 45 days, the 1st Defendant shall produce reconstructed statements for both accounts, adhering to the above parameters, and serve the Plaintiffs.

            ii. Within 30 days thereafter, the Plaintiffs shall verify and respond, identifying any remaining disputes.

iii. If disputes remain, the parties shall, within 15 days thereafter, jointly agree on an independent auditor to audit on the Court-set parameters. Failing agreement, the Court will appoint one.

iv. Costs of audit shall be shared equally unless the auditor reports material non-compliance by one party, in which event the Court may vary costs.

v. The questions of refund or recovery of legal, auctioneer, and valuation charges, as well as the question of reimbursement of Kshs. 1,334,000 audit fees, shall be determined upon conclusion of the accounting/reconciliation exercise.

vi. Pending the accounting exercise, the Plaintiffs shall continue to service any undisputed instalments under the reconstructed schedules, without prejudice to rights arising from final reconciliation.

72. Costs of the suit shall abide the outcome of the accounting exercise and final determination. Interim costs are reserved.

73. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 25TH NOVEMBER 2025

ADO MOSES

JUDGE

In the presence of: -

C/A – Moses

Gachanja.....for the Plaintiffs

Kimani..... for the Defendant