



**Mweni v Stanbic Bank (K) Limited & another (Commercial Case E672 of 2024)  
[2025] KEHC 17073 (KLR) (Commercial and Tax) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17073 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E672 OF 2024  
MN MWANGI, J  
NOVEMBER 14, 2025**

**BETWEEN**

**FREDRICK TSOFA MWENI ..... APPLICANT**

**AND**

**STANBIC BANK (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**PHILIPS INTERNATIONAL AUCTIONEER ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is a Notice of Motion application dated 12<sup>th</sup> November 2024 filed by the plaintiff/applicant under the provisions of Article 159 of *the Constitution*, Sections 1A, 1B, 3A, 3B, 63(e) & 80 of the *Civil Procedure Act*, Orders 45 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. The plaintiff prays for an order of temporary injunction restraining the defendants, their agents, servants, or anyone acting under them, from entering, interfering with, dealing with, selling, disposing of, or transferring any interest in the suit property until this suit is heard and determined.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Fredrick Tsofa Mweni, the plaintiff herein. Mr. Mweni averred that he is the registered owner of Apartment A6, Block A on L.R No. 209/9683, Mwewe Apartments, Kileleshwa, Nairobi, which he purchased in 2010 at a consideration of Kshs.13,500,000/= and has been in continuous occupation since. He stated that in 2011, he obtained a home loan facility from the 1<sup>st</sup> defendant for Kshs.12,600,000/=, repayable over 240 months at an interest rate of 24%, secured by a charge over the suit property registered on 29<sup>th</sup> December 2011. He averred that he has diligently serviced the loan for over 12 years, having remitted approximately Kshs.34,000,000/=, but the 1<sup>st</sup>



defendant has unilaterally varied the interest rates without prior notice, contrary to the terms of the charge and the provisions of the law.

3. Mr. Mweni stated that the 1<sup>st</sup> defendant has irregularly apportioned over 97% of his payments towards interest and charges, leaving only a minimal portion to the principal, and that it is still claiming Kshs.11,771,366.43 as the outstanding loan balance. He averred that he was only issued with partial statements of accounts and projection schedules, which revealed inconsistent and arbitrary variations in monthly instalments. Mr. Mweni claimed that he only became aware of statutory notices dated 3<sup>rd</sup> November 2023 for 90 days, 8<sup>th</sup> May 2024 for 40 days and 2<sup>nd</sup> August 2024 being the 45 days redemption notice on 13<sup>th</sup> September 2024, when the 1<sup>st</sup> defendant sent them via email. He asserted that the said Notices were never properly served, contrary to the requirements of Section 90(1) of the Land Act. He contended that the intended sale of his suit property by public auction is unlawful.
4. Mr. Mweni contested the Valuation Report relied upon by the defendants, terming it outdated and grossly undervaluing the suit property at Kshs.13,500,000/=, whereas its current market value is approximately Kshs.28,000,000/=. He expressed his readiness to deposit Kshs.2,000,000/= in an escrow account to be held in the name of the Advocates for the parties, as security pending the determination of this suit. He maintained that the defendants' intended sale of the suit property is unlawful, irregular and unjust, and urged the Court to grant the injunctive relief being sought.
5. In opposition to the application, the 1<sup>st</sup> defendant filed a replying affidavit sworn on 25<sup>th</sup> November 2024 by Ms Edna Omangi, the Manager Non-Performing Loans at the 1<sup>st</sup> defendant bank. Ms Omangi averred that the orders issued on 13<sup>th</sup> November 2024 restraining the sale of the suit property had been overtaken by events, as the public auction had already taken place earlier that day and the property was sold to James Owiti Lugendo, a bona fide purchaser for value, for Kshs.13,550,000/=. She confirmed that the plaintiff was advanced a home loan facility of Kshs.12,600,000/= pursuant to a letter of offer dated 14<sup>th</sup> December 2011, secured by a legal charge registered over the suit property. She stated that the said loan was repayable over 240 months at an interest rate of 24% per annum, subject to the bank's standard terms and conditions, which the plaintiff had acknowledged and accepted.
6. Ms Omangi contended that all variations in interest rates were made lawfully and with Notice, in line with the Central Bank of Kenya policy changes. She averred that most variations reflected reductions in the applicable rate. She deposed that the plaintiff's loan repayments were irregular and characterized by persistent default, resulting in arrears of Kshs.3,334,355.05 and an outstanding loan balance of Kshs.12,546,114.38 as at 13<sup>th</sup> November 2024. She deposed that due to continued default, the bank duly issued all statutory and redemption notices in compliance with Sections 90 & 96 of the Land Act, including the 90-day notice dated 3<sup>rd</sup> November 2023, 40-day redemption notice dated 8<sup>th</sup> May 2024 and 45-day notification of sale dated 2<sup>nd</sup> August 2024.
7. Ms Omangi asserted that the suit property was duly valued by Hallmark Valuers Company Limited on 23<sup>rd</sup> November 2023, which gave an open market value of Kshs.18,000,000/=: mortgage value of Kshs.14,400,000/=: and forced sale value of Kshs.13,500,000/=: thereby satisfying the bank's duty of care under Section 97(1) of the Land Act. She averred that the auction sale price of Kshs.13,550,000/= was above 75% of the market value and thus lawful. She contended that the plaintiff's equity of redemption was extinguished upon the fall of the hammer, rendering the application moot and untenable. Ms Omangi stated that the instant application fails to establish a prima facie case, and urged the Court to dismiss it with costs.
8. In a rejoinder, the plaintiff filed a supplementary affidavit sworn on 26<sup>th</sup> February 2025 by Mr. Fredrick Tsofa Mweni, the plaintiff herein. He disputed the 1<sup>st</sup> defendant's claim that the suit property was sold before the Court Order was issued, stating that the auction scheduled for 13<sup>th</sup> November 2024 at 11:00



- a.m., had no registered bidders, therefore no sale took place at that time. He averred that he personally attended the auction venue between 10:30 a.m. and 11:30 a.m., where he met representatives of both defendants and informed them that he had already filed a suit on 12<sup>th</sup> November 2024 seeking injunctive orders. That thereafter, he proceeded to the 1<sup>st</sup> defendant's offices and met Ms Edna Omangi, who confirmed that as at 11:45 a.m., the suit property had not been sold due to the absence of bidders.
9. Mr. Mweni asserted that despite being served with the interim Court Order issued on 13<sup>th</sup> November 2024 restraining the sale and transfer of the suit property, the defendants proceeded to transfer the suit property to a third party through a transfer form dated 6<sup>th</sup> December 2024, thereby acting in contempt of Court. He claimed that the purported purchaser of the suit property did not comply with the auction terms published in the Daily Nation, which required a Kshs.1,000,000/= deposit, whereas only Kshs.500,000/= was paid. He contended that the 1<sup>st</sup> defendant's right of sale had not crystallized, as no valid statutory notice was issued, rendering any transfer of the suit property illegal, null and void. He denied ever receiving any notice of default, insisting that the 1<sup>st</sup> defendant did not send any notices by registered post or email, despite having his correct contact details.
  10. The application herein was canvassed by way of written submissions. The 1<sup>st</sup> defendant's submissions were filed on 25<sup>th</sup> February 2025 by the law firm of Wainaina Ileri Advocates LLP. The plaintiff did not file any written submissions nor did he make any oral submissions in support of the application herein, as is evident from Case Tracking System and the Court record, respectively.
  11. Ms Kariuki, learned Counsel for the defendants submitted that the Orders issued on 13<sup>th</sup> November 2024 restraining the sale of the suit property have been overtaken by events, as the public auction of the property had already been conducted earlier that day. She argued that the 1<sup>st</sup> defendant was served with the Court Order and pleadings at 5:02 p.m., on 13<sup>th</sup> November 2024, after the auction had taken place, and was therefore unable to comply with the said Order. She relied on the case of Harishchandra Bhovanbhai Jobanputra & another v Paramount Universal Bank Limited & 3 others [2019] KECA 582 (KLR), and submitted that the plaintiff's equity of redemption was extinguished at the fall of the hammer. Counsel asserted that the instant application is moot, legally untenable and granting the orders being sought herein would prejudice a bona fide purchaser for value.
  12. Counsel relied on the principles set out in the case of Giella v Cassman Brown & Company Limited [1973] E.A. 358, and stated that the plaintiff has not made out a case to warrant being granted the orders sought herein. As to what constitutes prima facie case, she relied on the Court of Appeal case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), and contended that the plaintiff's allegations including non-disclosure of loan terms, unlawful variation of interest rates, regular servicing of the loan, and undervaluation of the property are false, misconceived, and unsupported by evidence. She asserted that the loan facility of Kshs.12,600,000/= was advanced under a duly executed letter of offer and charge instrument, both of which clearly set out the repayment terms and standard conditions. She explained that interest rate variations were lawfully made in accordance with the bank's base lending rate adjustments, often resulting in reductions rather than increases.
  13. Ms Kariuki submitted that in respect to valuation, the defendants obtained a professional Valuation Report dated 23<sup>rd</sup> November 2023, placing the forced sale value at Kshs.13,500,000/=:, whereas the suit property was sold for Kshs.13,550,000/=:, above the statutory threshold. She argued that the plaintiff had not adduced any contrary valuation evidence. She asserted that the plaintiff has not demonstrated what injury he stands to suffer in the event that the instant application is not allowed. She cited the case of Maltex Commercial Supplies Ltd & Another v Euro Bank Ltd (In Liquidation) [2006] eKLR, and contended that the plaintiff voluntarily offered the suit property as security for a loan, knowing



it was liable to being sold upon default. Ms Kariuki submitted that the balance of convenience tilts in favour of the defendants.

### **Analysis And Determination.**

14. I have considered the application herein, the grounds on the face of it and the affidavits filed in support thereof. I have also read the replying affidavit by the 1<sup>st</sup> defendant and the written submissions by Counsel for the 1<sup>st</sup> defendant. The issue that arises for determination is whether an order of temporary injunction should issue.
15. The law governing the granting of interlocutory injunctions is set out under Order 40(1)(a) and (b) of the Civil Procedure Rules, 2010, which provides that -  
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; or
  - 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 orders.
16. The conditions to be considered when dealing with an application for temporary injunction were well settled in the case of *Giella v Cassman Brown & Company* (supra), where the Court held as hereunder -  

Firstly, 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.
17. It is not in dispute that the plaintiff obtained a financial facility of Kshs.12,600,000/= from the 1<sup>st</sup> defendant. It is evident that by a letter of offer dated 28<sup>th</sup> October 2011, the 1<sup>st</sup> defendant initially offered the plaintiff a home loan of Kshs.16,200,000/=, repayable over a period of 240 months in equal monthly instalments of Kshs.228,428.00 at an interest rate of 16.25%. Subsequently, through a revised offer letter dated 14<sup>th</sup> December 2011, the facility was adjusted to Kshs.12,600,000/=, repayable over the same period at an interest rate of 24%. The plaintiff's case is that the 1<sup>st</sup> defendant failed to disclose how the monthly instalments would be apportioned between repayment of the principal amount and the accrued interest over the 240-month loan period. He however maintained that the charge over the suit property was intended to secure the sum of Kshs.12,600,000/=, repayable in equal monthly instalments of Kshs.228,428.00 over the said period.
18. Upon perusal of the offer letter dated 14<sup>th</sup> December 2011 annexed to the plaintiff's supporting affidavit and the 1<sup>st</sup> defendant's replying affidavit, which the plaintiff duly accepted, it is evident that the home loan of Kshs.12,600,000/= was to be repaid in 240 months at an interest rate of 24%, through equal monthly instalments of Kshs.254,19.00 but the plaintiff admits to paying Kshs.228,428.00 instead of Kshs.254,194.00 as stipulated in the offer letter, thereby confirming irregular repayments thereby lending credence to the 1<sup>st</sup> defendant's claim of arrears.



19. The plaintiff also claimed that the 1<sup>st</sup> defendant unlawfully varied the interest rates without providing prior written notice, contrary to the terms of the charge instrument and the applicable law. The 1<sup>st</sup> defendant however demonstrated that the adjustments made were reductions from the agreed interest rate of 24% and that each change was duly communicated to the plaintiff through letters dated 13<sup>th</sup> May 2013, 1<sup>st</sup> July 2013, 2<sup>nd</sup> June 2015, 13<sup>th</sup> July 2015, and 8<sup>th</sup> August 2016, as well as emails sent on 3<sup>rd</sup> January 2024 and 15<sup>th</sup> May 2024. In my considered view, such reductions cannot be construed as having created a clog on the equity of redemption, as they operate to the plaintiff's advantage by easing the repayment burden. I am therefore satisfied that the plaintiff remains indebted to the 1<sup>st</sup> defendant.
20. The next issue for determination is whether the defendants duly served the plaintiff with all the requisite statutory notices prior to exercising their statutory power of sale over the suit property. The plaintiff admitted having received the 90-day statutory notice dated 3<sup>rd</sup> November 2023, the 40-day notification of sale dated 8<sup>th</sup> May 2024 and the 45-day redemption notice dated 2<sup>nd</sup> August 2024. He however contended that the said Notices were only received on 13<sup>th</sup> September 2024, when they were forwarded to him via email. The 1<sup>st</sup> defendant on the other hand maintained that the said Notices were properly served upon the plaintiff both by email and through registered mail sent to his last known postal address.
21. Upon perusal of the offer letter and the charge document, it is evident that the plaintiff's postal address is indicated as P.O. Box 11987-00100, Nairobi, Kenya. This is the same address to which the statutory notices were sent, as reflected on the Notices annexed to the 1<sup>st</sup> defendant's replying affidavit. Additionally, the 1<sup>st</sup> defendant attached copies of Certificates of Posting of Registered Postal Articles issued by the Postal Corporation of Kenya, confirming dispatch of the said Notices. The plaintiff has neither disputed ownership of the stated postal address, nor denied having previously received other correspondence, including the offer letter dated 14<sup>th</sup> December 2011, through the same address. In view of the foregoing, I am satisfied that the plaintiff was duly served with all the requisite statutory notices prior to the 1<sup>st</sup> defendant exercising its statutory power of sale over the suit property.
22. This Court notes that there is a dispute regarding the valuation of the suit property conducted by the defendants, which formed the basis for determining its intended selling price. The plaintiff did not however produce an alternative valuation report prepared by a Valuer of his choice to enable this Court to compare and assess whether the defendants' valuation was indeed below the suit property's market value. Consequently, I find that the plaintiff failed to discharge his burden of proof as required under Sections 107 and 108 of the *Evidence Act*.
23. The Court of Appeal in the case of *Mrao Ltd v. First American Bank of Kenya Ltd & 2 others (supra)* defined what constitutes a prima facie case as follows -

So what is a prima facie case" I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.
24. This Court finds that the plaintiff has not demonstrated a prima facie case with a probability of success against the defendants, to warrant being granted the orders being sought herein.



25. As to whether the plaintiffs shall suffer irreparable injury in the event that the instant application not allowed, I find that they would not. Section 99(4) of the *Land Act*, 2012, expressly provides that where a chargor suffers loss, damage, or prejudice as a result of an improper or irregular exercise of the chargee's statutory power of sale, the appropriate remedy lies in an action for damages. In addition this Court is cognizant of the fact that a property offered as security becomes a commodity for sale in the event of default. This principle was affirmed in the oft cited case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2013] KEHC 363 (KLR), where the Court held that –

The judge below found that no prima facie case was established and secondly that damages could in fact be an adequate compensation as the appellant's guaranteed security had been converted into a commodity for sale upon the same being charged to the respondent.

26. In view of the said decision, and bearing in mind that the value of the suit property can be easily determined through valuation, the 1<sup>st</sup> defendant, being a financial institution would be in a position to compensate the plaintiff should the suit ultimately be decided in his favour. Consequently, I am not persuaded that the plaintiff stands to suffer irreparable injury that cannot be adequately compensated by an award of damages in the event that the instant application is not allowed.

27. The issue of balance of convenience does not arise since this Court is not in doubt. Nevertheless, based on the analysis I have made in this Ruling, the balance of convenience tilts in favour of the 1<sup>st</sup> defendant.

28. It is my finding that the application dated 12<sup>th</sup> November is without merits. It is hereby dismissed with costs to the 1<sup>st</sup> defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Ogado for the plaintiff in the main suit

Mr. Ngugi h/b for Ms Kariuki for the 1<sup>st</sup> defendant in the main suit

Mr. Ng'ang'a h/b for Mr. Kimani for the 3<sup>rd</sup> defendant in the main suit and the plaintiff in the counterclaim

Ms B. Wokabi – Court Assistant.

