



**Nelka Regional Ventures Limited v ABSA Bank Kenya PLC;
Regent Auctioneers (Interested Party) (Civil Case E084 of 2025)
[2025] KEHC 17222 (KLR) (Commercial and Tax) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E084 OF 2025
PM MULWA, J
NOVEMBER 20, 2025**

BETWEEN

NELKA REGIONAL VENTURES LIMITED PLAINTIFF

AND

ABSA BANK KENYA PLC DEFENDANT

AND

REGENT AUCTIONEERS INTERESTED PARTY

RULING

1. The Plaintiff Applicant has moved this Court by way of a Notice of Motion dated 10th February 2025 brought pursuant to Article 50(1) of *akn ke act 2010 constitution the Constitution*, Section 63E of the *akn ke act 1924 3 Civil Procedure Act*, Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules, Section 1A, 1B, 3A of the *akn ke act 1924 3 Civil Procedure Act* and Section 90 and 96 of the *akn ke act 2012 6 Land Act*, 2012. The Applicant seeks the following substantive orders:
 - i. An injunction restraining the Respondent and the Interested Party, their servants, agents, employees, or any person acting on their behalf from selling by public auction or private treaty, alienating, disposing, entering, leasing, appointing a receiver, trespassing, wasting, or in any way dealing with the properties known as Kiambaa Ruaka 2835, Kiambaa Kanunga 2838 and Kiambaa Kanunga 2839 (hereinafter referred to as the suit properties);
 - ii. An order allowing the Plaintiff to conduct an independent valuation of the suit properties.
 - iii. costs of the application.



2. The application is supported by the affidavit of Gilbert Mwangi, a director of the Plaintiff company, sworn on 10th February 2025. He avers that in December 2022, the Plaintiff obtained a bank guarantee of Kshs. 63 Million from the Defendant, secured by a legal charge over the suit properties.
3. The Applicant contends that due to financial constraints, it fell into arrears, prompting the Respondent to commence realization of the securities. The Respondent, through the Interested Party, advertised the suit properties for sale by public auction scheduled for 11th February 2025.
4. The Applicant argues that the Respondent has grossly undervalued the properties, and unless restrained, the sale would be conducted at a value insufficient to offset the outstanding loan balance of Kshs. 83,161,038.60. It is further alleged that the purported auction was conducted in blatant disregard of interim court orders issued on 11th February 2025, and that only Kshs. 1 Million was deposited into the Plaintiff's account, contrary to the terms requiring a 25% deposit at the fall of the hammer.
5. The application is opposed through the Replying Affidavit of Samuel Njuguna, the Respondent's Legal Counsel Recoveries, sworn on 3rd March 2025. He avers that the Plaintiff defaulted in servicing the loan facility, leading to the issuance of the requisite statutory notices in compliance with Sections 90(2), 96(2) and 97(2) of the *akn ke act 2012 6 Land Act, 2012*.
6. The Respondent asserts that the auction was duly conducted on 11th February 2025, and the highest bidder, Robert Muriuki Muthumi, offered Kshs. 33 Million for Kiambaa Ruaka 2835, and Kshs. 16.9 Million for the other two parcels combined. The bidder is said to have paid a 10% deposit of Kshs. 5,070,000 via cheque and Kshs. 1 Million via RTGS, although the cheque later bounced.
7. The Respondent further contends that an updated valuation was conducted which returned market and forced sale values, Kiambaa Ruaka 2835, Market Value: Kshs. 45 Million; Forced Sale Value: Kshs. 33,750,000 and Kiambaa Kanunga 2838 and 2839 Market Value: Kshs. 22,500,000; Forced Sale Value: Kshs. 16,900,000.
8. It is therefore argued that the allegation of undervaluation is unfounded. The Respondent argues that the Applicant having defaulted in payment has not established a prima facie case.
9. The application was heard by way of written submissions the applicant submissions are dated 9th June 2025 while the Respondent filed submissions dated 14th April 2025.

Analysis and determination

10. Having considered the pleadings, affidavits, and submissions, the following issues arise for determination:
 - i. Whether the Applicant has satisfied the conditions for the grant of a temporary injunction; and
 - ii. Whether the Applicant is entitled to conduct an independent valuation.
11. The principles governing the grant of interlocutory injunctions were settled in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where the Court held that:

“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; and thirdly, when the Court is in doubt, it will decide the application on a balance of convenience.”



12. The Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR reaffirmed that these three principles are sequential and not conjunctive. The failure to establish the first limb is fatal to an application for an injunction.
13. On the first limb, the fact of default is not in dispute. The Applicant has candidly admitted that it fell into arrears in the repayment of the facility advanced by the Respondent. Upon default, the chargee's statutory right of sale under Sections 90 and 96 of the *akn ke act 2012 6 Land Act*, 2012 crystallized.
14. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal held that:

“A prima facie case is more than an arguable case. It is a case which, on the material presented, shows that there exists a right which has been infringed by the opposite party so as to call for an explanation or rebuttal.”
15. The Respondent has demonstrated that the requisite statutory notices were duly issued and served. The Applicant has not contested the validity or service of those notices. What the Applicant mainly challenges is the alleged undervaluation of the charged properties and the alleged sale in contempt of court of the subsisting interim order issued on 11th February 2025 restraining the sale of the suit properties.
16. The Applicant annexed an affidavit of service showing that the said orders were served upon the Respondent and the Interested Party by email at 12:48 p.m. on the same date. However, the auction had been scheduled for 11:00 a.m. on 11th February 2025. The critical question, therefore, is whether the Respondent or the auctioneer had knowledge of the court order before the sale took place.
17. There is no evidence before this Court to show that the Respondent or the Interested Party had prior knowledge of the said orders before the auction commenced. The law presupposes proper and timely service or proof of knowledge of an order before a party can be held in contempt. As was held in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR:

“A party cannot be said to have disobeyed a court order unless it is shown that the order was served upon him or that he had knowledge of it.”
18. In this case, the affidavit of service indicates that service was effected after the scheduled time of auction. The Applicant has not provided proof that the Respondent or auctioneer had prior knowledge of the order before the sale commenced. Accordingly, the allegation that the sale was conducted in contempt of court is not borne out by the evidence.
19. On the allegation of undervaluation, the Respondent produced a valuation report dated 7th June 2024 showing that the sale prices achieved were consistent with the forced sale values. The Applicant has not produced an independent or contrary valuation report to demonstrate otherwise. Allegations of undervaluation therefore remain speculative and unsubstantiated.
20. In *Palmy Company Limited v Consolidated Bank of Kenya Limited* [2014] eKLR, the court observed that a claim of undervaluation must be supported by cogent and credible valuation evidence. Mere allegations, without a counter-valuation, cannot establish a breach of the chargee's statutory duty under Section 97(2) of the *akn ke act 2012 6 Land Act*, which obliges a chargee, when exercising the power of sale, to ensure that the charged property is sold at the best price reasonably obtainable. Consequently, the Court finds that the Applicant has not demonstrated a prima facie case with a probability of success.



21. In light of the undisputed default, the validity of the statutory notices, and the absence of evidence of undervaluation or contempt, the Court is not persuaded that the Applicant has demonstrated a prima facie case with a probability of success.
22. It bears emphasis that the jurisdiction to grant an injunction is equitable and discretionary. Under Section 63(e) of the *akn ke act 1924 3 Civil Procedure Act* and Order 40 Rule 1 of the Civil Procedure Rules, the Court may issue temporary injunctions to prevent the ends of justice from being defeated. However, such discretion must be exercised judiciously and upon sound legal principles. An applicant must demonstrate a genuine and imminent threat to a legal right and approach the Court with utmost candour.
23. In the present case, the Applicant, being admittedly in default and having failed to substantiate its claims of undervaluation or contempt, does not merit the equitable intervention of this Court.
24. Having failed to establish a prima facie case, the Court finds no need to consider the remaining limbs under Giella. As was held in *Nguruman Limited (supra)*, if a prima facie case is not established, the Court need not proceed to the other tests.
25. Suffice it to add that in *Andrew Muriuki Wanjohi v Equity Building Society & 2 Others [2006] eKLR*, the Court held that:

“Once property is offered as security for a loan, it becomes a commodity for sale, and its loss cannot amount to irreparable injury.”
26. Accordingly, the Applicant cannot claim irreparable loss where the right to sell arises from its own default.

On the Request for Independent Valuation

27. Section 97(1) of the *akn ke act 2012 6 Land Act* imposes a duty of care on the chargee to obtain the best price reasonably obtainable. The Court in *Zumzum Investment Limited v Habib Bank Limited [2014] eKLR* held that a chargor may, in appropriate circumstances, be allowed to conduct an independent valuation to verify compliance.
28. Considering the dispute regarding valuation, and in the interest of fairness and transparency, I find it just to allow the Applicant to commission an independent valuation at its own cost, without restraining the Respondent’s statutory power of sale, provided the sale is not concluded before the valuation report is filed and served upon the Respondent within thirty (30) days.
29. In the result, I find the notice of motion dated 10th February 2025 partially succeeds. I make the following orders:
 - a. The prayer for an interlocutory injunction restraining the Respondent and the Interested Party from dealing with the suit properties is declined.
 - b. The Applicant is granted leave to conduct an independent valuation of the properties Kiambaa Ruaka 2835, Kiambaa Kanunga 2838 and Kiambaa Kanunga 2839 within thirty (30) days at its own cost, and to serve the report upon the Respondent forthwith.
 - c. Costs of this application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI

THIS 20TH DAY OF NOVEMBER 2025.



P.M. MULWA

JUDGE

In the presence of:

Mr. Ogara h b for Mr. Khakula for Plaintiff Applicant

Ms. Diru h b for Ms. Muthee for Defendants Respondents

Court Assistant : Carlos

