



REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
COMMERCIAL CAUSE NO. E008 OF 2025

VIRGINIA KATHAMBI MAINGI
.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....1ST
DEFENDANT

INTEGRA AUCTIONEERING (K) LTD.....2ND
DEFENDANT

RULING

1. The Notice of Motion Application before the court is dated 03/04/2025 seeks an order to bar the 1st Respondent from selling and/or transferring any and all part of the properties known as LR. NO 337/2713 (IR 74203) and Title no Mavoko Municipality Block 6/786 both located in Mavoko Municipality, Machakos County pending the hearing and determination of the main suit and that costs be in the cause.
2. The gist of the application is that whereas the applicant did borrow a loan from the applicant and charged the properties to the 1st Respondent and has defaulted the intended sale of her properties is unlawful as she was not served with the requisite statutory notice and neither has she been provided with an account.

3. The application was opposed through a replying affidavit sworn by Terry Olala Ombuya, the Universal Banker of the 1st Respondent. She deposes that as at 21st May 2024 the applicant owed the bank a sum of Kshs. 39,079,987.98 as indicated in the Statutory Notice dated 20th June 2024. She deposes that the 1st respondent issued all requisite statutory notices under Sections 90(1), 90(2)(b) & 96(2)(3) of the Land Act, a 40-day Notification of Sale under Section 96(2) of the Land Act was duly served and that the auctioneer instructed by the 1st Respondent also issued the applicant a 45-day Redemption Notice. She further deposes that prior to commencing enforcement, the bank gave the applicant two moratorium period and as such the applicant has not approached this court with clean hands.
4. The application was disposed off by way of written submissions with the Plaintiff/ Applicant filing hers on 24/06/2025 and the contended that she had an arguable case showing an infringement of a right and the probability of success. She denied receiving any hard copy mail, any email or any form of communication from the 1st Defendant relating to the outstanding loan and there is no evidence showing that any registered post was sent to the Applicant. The submissions were supported by the cases of Terracraft (K) Limited & another v KCB Bank Kenya Limited [2020] eKLR, Maina v Stanbic Bank Kenya Limited & 2 others (Civil Case E261 of 2022) [2022] KEHC 9943 (KLR) and Robert Mugo Wa Karanja v Ecobank (Kenya) Limited & another [2019] KEHC 10298 (KLR).

5. On its part, the Respondent relied on the cases of Nguruman Nguruman Ltd v Jan Bonde Nielsen & 2 Others [2014] eKLR, Mrao Ltd v First American Bank of Kenya Ltd [2003] KLR 125, Pelican Investment Ltd v National Bank of Kenya Ltd [2000] eKLR, Palmy Company Limited & Another v Consolidated Bank of Kenya Ltd [2014] eKLR and NK v Co-operative Bank of Kenya Ltd [2021] eKLR submitted that the threshold for the granting of an injunction had not been met and asked the court to dismiss the application with costs.

Analysis and determination.

6. I have considered the Notice of Motion Application, the Affidavits and annexures on record as well as the submissions by both sides. That the Applicant and the Respondent entered into the loan agreement is not disputed. It is also not disputed that the Applicant is still indebted to the Respondent. It is also not disputed that the Applicant charged the suit properties as security for the loan and that the Respondent's right to realise the securities has materialised. The only issue for determination is whether the Respondent issued the requisite statutory notice as the Applicant claims that she was not served with a notice.

7. I have perused the documents annexed to the replying affidavit of the Respondent. One of them is a statutory notice. The Statutory notice was sent by registered post. There is also an affidavit of service sworn by Elizabeth Muigai, a licensed process server, in which it is deponed that the Applicant was

served with a 45 days redemption notice and a notice of attachment through registered post on 27th January 2025 and personally on 31st January 2025 albeit she did not accept service. The same address used to serve the redemption notice which the Applicant admits she received was the same one that was used to serve the statutory notice. I am therefore not persuaded that the applicant has demonstrated a prima facie case to warrant this court to grant the restraining orders sought.

8. The upshot is that the application is not merited and it is dismissed with costs to the Respondents.

Orders accordingly.

Ruling signed, dated and delivered virtually on this 27th day of November 2025.

**E. N. MAINA
JUDGE**

IN PRESENCE OF:

Ms Mburu for the Applicant

Mr. Kirui for 1st Defendant

C/A: Geoffrey