



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
COMMERCIAL CASE NO. E015 OF 2025

MOSCHA COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

**EQUITY BANK (K) LIMITED)1ST
DEFENDANT/RESPONDENT**

**INTEGRA AUCTIONEERING (K) LTD.....2ND
DEFENDANT/RESPONDENT**

RULING

1. Before the court is a Notice of Motion Application dated 3/07/2025 seeking the following orders;

“a. Spent

b. Spent

c. THAT the Honourable court be pleased to issue an order of temporary injunction restraining the defendants/ respondents by themselves, their agents, servants, employees or whomsoever from entering, from disposing, from selling, from further reallocating, from transferring, from auctioning on the 4th July, 2025 or at any date thereafter, from sub-dividing, from charging, and/or in any way from interfering and/or having any dealings with the land parcel Mavoko Town Block 3/33292 or at all pending the hearing and determination of this suit and/or until further orders of the court.

d. THAT costs of the application be in the cause.”

2.The Application is supported by the Affidavit of Peter Wabuiya Kagoiyo, the director of the Plaintiff Applicant who deposed that the company is the absolute proprietor of parcel of land known as Title No. Mavoko Town Block 3/33292 Kinanie Trading Centre measuring 12.95 acres of land and or about the 15th April,2025 the 2nd defendant/Auctioneer issued a redemption Notice to the plaintiff/applicant for the sale of the plaintiff property above in exercise of the Statutory Power of Sale in the Standard Newspaper dated 2/09/2024. The auction was to be conducted on 4/09/2025 at 11:00 a.m. he indicated that this was preceded by a letter dated the21/08/2024 for recovery of Kshs.2,600,227.53.

3.He admitted to taking a loan of Kshs 5,400,000 on 01/12/2025 and the outstanding balance was Kshs 2,600,000. He alleged that the 1st Defendant/Respondent failed to comply with the statutory requirements as stipulated under Section 90 and Section 96 of the Land Act, 2012, which mandates the issuance of a 90-day Statutory Notice before exercising the power of sale and the valuation used for the sale was done in 2019 contrary to section 97 of the Land Act thus not reflecting the current market value. He contended that he had established a prima facie case with a probability of success and if the auction was conducted the damage could not be compensated by damages.

4.In opposition of the Application, the 1st Defendant/Respondent filed a Replying Affidavit dated 30/08/2025 wherein the Assistant Manager, Legal Services Samuel Wamaitha deposed that the bank intends to sell the said land to recover the loan advanced to Forecast Electronic Solutions Limited, the Principal debtor,

guaranteed by the Applicant herein and which they have defaulted in repayment by over a year despite communication between the parties and the principal debtor. Forecast Electronic Solutions Limited were granted a loan facility of Kshs. 5,400,000 which was secured by a charge over property known as Mavoko Town Block 3/2506 subdivision No.33292 via an offer letter dated 28/01/2014. He stated that all the statutory notices were issued to both the borrower and the Applicant as required by law and all the notices were sent to the addresses provided by the customer at the loan application stage and that he instructed the 2nd Defendant/Respondent to conduct the auction. He urged the court to dismiss the application.

5.The Application was dispensed with by way of written submissions.

6.As at the time of writing this ruling, the 1st and 2nd Defendant/Respondents submissions were not on record. For the Applicant the submissions are dated 29th September 2025. Learned Counsel submitted that the Applicant meets the threshold for grant of an order of injunction. Counsel reiterated the contents of the Supporting Affidavit and relied on the following cases to buttress his position; ***Nyangilo Ochieng and another vs Kenya Commercial Bank (1996) eKLR, Giella vs Cassman Brown (1973) EA 358, Manasseh Ndenga vs Eco Bank Limited & Another [2015] eKLR, Moses Kibyiego Yator Eco Bank Limited & Another [2014] eKLR, Koileken Ole Kipolonka Orumoi vs Mellech Engineering & Construction Limited & others [2018] eKLR, Othaya Villas***

Limited vs Victoria Commercial Bank Limited and 2 others [2020] e KLR, Mawji vs International University and another [1976-80] KLR 229, Ali Kitsao vs Kassim Mohammed Omar and 5 others, Banis Africa Ventures Limited vs National Land Commission [2021] e KLR and Joseph Siro Misioma vs Housing Finance Company of Kenya Limited and 3 other [2006] eKLR

Analysis and determination

7. The court has considered the Notice of Motion Application, the rival affidavits and the submission on record. The issue for determination is whether the court should grant an order of injunction pending the hearing and determination of the suit.

8. Courts are guided by the principles set out in the case of **Giella vs Cassman Brown and Co. Ltd Supra** which set out the principles for Interlocutory Injunctions as follows;

- i. The Plaintiff must establish that he has a prima facie case with high chances of success;**
- ii. That the Plaintiff would suffer irreparable loss that cannot be compensated by an award of damages;**
- iii. If the court is in doubt, it will decide on a balance of convenience**

9. The Applicant for a temporary injunction must demonstrate a *prima facie* case with a probability of success; that damages are not adequate remedy, but in case of doubt, the balance of convenience will be considered. See the case of ***East African Industries vs. Trufoods Ltd [1972] E.A. 420.***

10. In the case of **Mbuthia v Jimba Credit Finance Corporation & another [1988] KECA 116 (KLR)** Plat JA stated:-

“The correct approach in dealing with an application for the injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side’s propositions. There is no doubt in my mind that the learned Judge went far beyond his proper duties, and has made final findings of fact on disputed affidavits. Supposing that the valuation of the plaintiff’s Valuer were to be accepted as showing the true market value of the land in question, after evidence viva voce under cross-examination, how then could the Judge find that the sale at a price of Kshs. 200,000/- was not inconsiderably low? At roughly half the price, how could that be maintained as such an obvious situation, that the plaintiff’s chances of success were found to have less than a possibility of success?”

...

It is a case where the disputed facts allow a doubt as to which party will be proved right at the trial. It is a question of seeking the balance of convenience. The subject matter of the suit is land, in fact the Appellant’s home at Buru Buru. In disputes concerning land it is usual to grant an injunction. It would be right to grant an injunction on terms in this case.”

11. From the pleadings, the fact that the Plaintiff/Applicant borrowed from the 1st Defendant/Respondent is not disputed. It is also not disputed that the property in issue was charged to bank as security for the loan. It is also not disputed that the Plaintiff/Applicant is indebted to the 1st Defendant/Respondent.

That the 1st Defendant/Respondent has a right to exercise its statutory power of sale is also not disputed. It is however contended that the procedure for redemption was not properly exercised. In the case of **Mrao Ltd Vs First American Bank of Kenya and 2 others,{2003} KLR125** where the court stated thus;

“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. 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.”

12. The 1st Defendant/Respondent has not satisfied this court that the procedure for foreclosure was followed. The Plaintiff/Applicant has therefore established that he has a prima facie case with a likelihood of success. Accordingly, but noting that the only issues in dispute are the service of statutory and redemption Notices I shall grant a restraining order, but subject to the 1st Defendant/Respondent and the 2nd Defendant/Respondent issuing proper notices, or upon the hearing of this case whichever comes first.

13. The costs of the 2nd Defendant/Respondent shall be met by the Applicant but the costs of the appeal shall be in the cause.

Orders accordingly.

Ruling signed, dated and delivered virtually this 18th December, 2025.

**E. N. MAINA
JUDGE**

IN THE PRESENCE OF:

Mr. Kibelion for Arusei for Plaintiff/Appellant

Ms Alusiola for Defendant/Respondent

Geoffrey - Court Assistant/Interpreter