Omega Foundation v SBM Bank Limited & another (Commercial Civil Suit E009 of 2025) [2025] KEHC 18900 (KLR) (4 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18900 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

COMMERCIAL CIVIL SUIT E009 OF 2025

JM OMIDO, J

DECEMBER 4, 2025

BETWEEN

OMEGA FOUNDATION ..... PLAINTIFF

AND

SBM BANK LIMITED ..... 1ST DEFENDANT

GODFFREY C. OMONDI T/A COLINET AUCTIONEERS ..... 2ND DEFENDANT

RULING

A. Background

1. The Plaintiff commenced this suit vide a plaint dated 14th July, 2025 and contemporaneously filed a notice of motion of even date under a certificate of urgency in which it sought interim interlocutory injunctive relief.

2. When this matter was placed before me ex parte on 15th July, 2025 for consideration of the application dated 14th July, 2025, I issued the following ex parte orders:

    1. That the application is certified as urgent.

    2. That an order of temporary injunction is hereby issued restraining the Defendants whether by themselves, their agents, representatives, servants and/or employees from selling, offering for sale, transferring, alienating or otherwise interfering and/or dealing in any way with the Plaintiff's parcel of land known as Kisumu Municipality Block 4/316, until 30th July, 2025.

    3. That the application and all other court process to be served within 3 days.

    4. That the matter to be mentioned for directions on 30th July, 2025.

3. The above interim orders have remained in force to date, having been extended by this court.

B. The Notice Of Motion Dated 16Th July, 2025.

4. Aggrieved by the interim orders issued on 15th July, 2025, the Defendants filed the notice of motion dated 16th July, 2025, expressed to be brought under Articles 40, 47, 50, 165 of *the Constitution* of Kenya, Section 1A, 3, 3A, 6 and 7 of the Civil Procedure Rules, Order 2 Rules 15(b) & (d), Order 40 Rule 4 & 7 and Order 50 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law and seeks the following orders:

    a. That [Spent].

    b. That the ex parte orders issued on 15th July, 2025 be and are hereby discharged for non-disclosure of material facts, namely determination of a similar suit and two rulings on the same issues having been delivered in Kisumu HC. Commercial Suit No. 69 of 2025.

    c. That the application dated 14th July, 2025 and the entire suit be struck out for being scandalous, frivolous, forum shopping and vexatious and an abuse of court process.

    d. Costs of the application and the suit be awarded to the Defendants on the higher scale.

5. The grounds upon which the application is premised are laid out on its face and are as follows, in precis:

    a. The Plaintiff/Applicant misled the court into issuing the ex parte orders by failing to disclose material facts, namely that there exists another suit over the same subject matter being Kisumu HCCOMM No. 69 of 2018 where the prayers that are sought in the application subject of which this court issued interim ex parte orders were dismissed in rulings delivered on 18th September, 2018 and 8th February, 2022.

    b. The Plaintiff further failed to disclose that it filed another application dated 10th February, 2022 in Kisumu HCCOMM No. 69 of 2018 in which stay pending the filing of an intended appeal and the court ordered that status quo be maintained until 10th March, 2022 on condition that the Plaintiff continues to make payments in accordance with the contractual terms between the parties. However, the Plaintiff did not pursue any appeal and abandoned Kisumu HCCOMM No. 69 of 2018, which was due for dismissal for want of prosecution. The ruling on the application dated 10th February, 2022 was delivered on 3rd March, 2022.

    c. The Plaintiff further failed to disclose that it filed Kisumu MCCC E306 of 2024 Omega Foundation v SBM Bank Kenya Limited and that the suit was struck out on 23rd June, 2025 as the Magistrate's Court lacked jurisdiction to entertain and determine it.

    d. That as a result of the fact of non-disclosure of the two previous suits, the ex parte interim orders were obtained through deceit and concealment of material facts.

    e. The ex parte interim orders are irregular as the same were issued over a span of more than 14 days.

C. The Defendant's Supporting Affidavit.

6. The application is supported by the affidavit of Beline Ochiel, the 1st Defendant's Manager, Corporate Recoveries, sworn on 16th July, 2025.

7. In her affidavit, Ms. Ochiel has expounded on the above grounds and states that Plaintiff filed the aforementioned suits and failed to disclose the same in the instant suit, thereby concealing material facts and misleading this court into issuing the ex parte interim orders.

8. The Defendants' deponent further complains that the interim ex parte orders issued on 15th July, 2025 were irregular as the same were given a life spanning more than 14 days, contrary to Order 40 Rule 4 of the Civil Procedure Rules.

9. The said deponent has annexed to her affidavit the following documents:A copy of a letter of offer dated 15th September, 2015 through which the Plaintiff and the 1st Defendant contractually engaged, whereby the former applied for and was advanced a loan facility of Ksh.60,000,000/- by the latter and in respect of which the deponent states that the Plaintiff defaulted in repaying.A copy of a ruling delivered on 18th September, 2018 in Kisumu HCCOMM No. 69 of 2018.A copy of a second ruling delivered on 8th February, 2018 in Kisumu HCCOMM No. 69 of 2018 where the court declined to issue injunctive reliefs as those that are sought in the Plaintiff's application dated 14th July, 2025.A copy of an order dated 14th February, 2022 vide which the court in Kisumu HCCOMM No. 69 of 2018 issued status quo orders which were to lapse on 10th March, 2022 on the condition that the Plaintiff continues to make payments in accordance with the contractual terms, which was to allow the Plaintiff pursue its appeal, which the Plaintiff never pursued.A copy of the CTS status report which indicates that the court delivered a ruling on 3rd March, 2022, closing the case in Kisumu HCCOMM No. 69 of 2018.A copy of the ruling delivered on 23rd June, 2025 in Kisumu MCCC E306 of 2024 vide which the court struck out the suit for want of jurisdiction.

D. The Plaintiff's Replying & Further Replying Affidavits.

10. The Plaintiff resisted the Defendant's application and to that end filed a replying affidavit and a further replying affidavit, both sworn by Martha Odera, its Treasurer and Director, on 17th July, 2025 and 28th July, 2025, respectively.

11. In her replying affidavit, Ms. Odera has deponed and denied that the Plaintiff is guilty of material non-disclosure and adds that the previous two suits were terminated before trial which then did not bar the Plaintiff from filing a fresh suit. She states that Kisumu HCCOMM No. 69 of 2018 was withdrawn before trial while Kisumu MCCC E306 of 2024 was struck out for lack of jurisdiction.

12. In her further replying affidavit, Ms. Odera states on oath that in the ruling delivered in Kisumu HCCOMM No. 69 of 2018 the court found that the 1st Defendant had devalued the charged property and regularization was therefore necessary.

13. With regard to the CTS excerpt in Kisumu HCCOMM No. 69 of 2018 introduced in the supporting affidavit, Ms. Odera states that the court closed the matter as there was inactivity and the Plaintiff was therefore not able to pursue the same. She states that the Plaintiff terminated by withdrawal the suit in Kisumu HCCOMM No. 69 of 2018 and that the notice of withdrawal of the suit was erroneously dated 21st July, 2025 instead of 21st July, 2024.

14. The Plaintiff thus takes the position that as at the time of the filing of the instant suit, there was no other suit pending between the parties as Kisumu HCCOMM No. 69 of 2018 had been withdrawn while Kisumu MCCC E306 of 2024 that was filed before the lower court had been struck out.

15. I note from paragraphs 5 to 7 of the replying affidavit and paragraphs 11 to 15 of the further replying affidavit that the Ms. Odera has introduced matters that are not relevant to the application before me, that ought to be addressed within the province of the application for injunction dated 14th July, 2025. I will therefore not consider the said paragraphs.

E. The Defendants' Further Affidavit.

16. In her further affidavit sworn on 22nd July, 2024, Ms. Ochiel states on oath that in the two rulings delivered in Kisumu HCCOMM No. 69 of 2018, the court considered and rendered its decisions on an application seeking for injunctive orders similar to those sought in the Plaintiff's application dated 14th July, 2025 that is pending before this court, the basis of which the challenged interim ex parte orders were issued by this court on 15th July, 2025. The deponent states that the application for injunction was declined in the rulings.

17. With regard to the position taken by the Plaintiff that it withdrew Kisumu HCCOMM No. 69 of 2018 Ms. Ochiel states that the said suit was as a matter of fact abandoned after the application for injunction was refused, following which the court closed the matter and that in any event, there is no indication that it was withdrawn. That as such, with the history of the two previous suits, the filing of the present suit after the 1st Defendant had resumed the process of exercising its statutory power of sale, amounted to an abuse of the process of the court.

18. Notably, paragraphs 12 to 21 of Ms. Ochiel's further affidavit go beyond the purview of the application before me as the said paragraphs address matters that are suited for the application for injunction dated 14th July, 2025. I will therefore not consider those paragraphs in this determination.

F. The Submissions By The Parties.

19. The application was canvassed by way of written submissions.

20. In their submissions, the Defendants urge, in their first point, that although the Plaintiff took the position that it withdrew Kisumu HCCOMM No. 69 of 2018, there is nothing on record that is indicative of such withdrawal in the CTS and that no notice of withdrawal of the suit was filed before the instant suit was instituted. That even so, the said notice of withdrawal of suit, which has a date for the year 2024 and was filed on 23rd July, 2025 at 4.07pm, is yet to be endorsed, the reason being that at the time of is filing, the subject suit had already been marked as closed.

21. The second issue that the Defendants raise in their submissions is that the ex parte interim injunctive orders that were issued herein are irregular and should be discharged as the same were given a lifespan lasting beyond 14 days, contrary to Order 40 Rule 7 of the Civil Procedure Rules.

22. The third issue that the Defendants present is that the impugned orders were issued pursuant to non-disclosure and concealment of material facts by the Plaintiff of the existence of the two previous suits between the same parties and over the same subject matter. The Defendants submit that two rulings were rendered in Kisumu HCCOMM No. 69 of 2018 whereby the court refused to issue an injunction, which orders have again has been sought in this matter vide the application dated 14th July, 2025.

23. The fourth issue is in respect of the Plaintiff's suit, whereby the Defendants seek that the same be struck out under Order 2 Rule 15 of the Civil Procedure Rules, for being an abuse of the court process. On this, the Defendants urge that in the two previous suits, the Plaintiff and the Defendants are the same parties as is in the instant suit and the reliefs sought in all the three suits are the same, save for the introduction of a new argument in the present suit that the 1st Defendant frustrated negotiations on sale by private treaty, which the Defendants submit amounts to litigation in instalments. The Defendants thus submit that the present suit is frivolous, vexatious and an abuse of the court process.

24. In its submissions, the Plaintiff denies that it failed to disclose the existence of the two previous suits and submits that in paragraph 26 of the plaint, it pleaded that there were two previous suits, as follows:

> "26. There has been two previous matters being Kisumu HCCOMM No. 69 of 2018 which was withdrawn when negotiations began and Kisumu CMCC No. E306 of 2024 which was struck off for lack of jurisdiction. Both suits were never heard and determined and that would not prevent the filing of this suit."

25. The Plaintiff further submits that the above amounted to full disclosure and that it went further to annex the rulings that were rendered in the two previous suits to the affidavit in support of its application dated 14th July, 2025.

26. As to whether the suit and the application dated 14th July, 2025 are res judicata, the Plaintiff submits that Kisumu HCCOMM No. 69 of 2018 and Kisumu MCCC E306 of 2024 were never fully heard and determined and that the latter was summarily struck out for lack of jurisdiction, and that the result meant that the Plaintiff was not barred from filing the suit afresh. With respect to Kisumu HCCOMM No. 69 of 2018, the Plaintiff submits that the same was closed by the court before the hearing of the matter and that no final judgement was rendered in the matter.

27. In its further submission on the issue of res judicata, the Plaintiff urges that the auctioneer (2nd Defendant) involved in Kisumu MCCC E306 of 2024 was Nyaluoyo Auctioneers, different from the auctioneer involved in Kisumu HCCOMM No. 69 of 2018 and that the complaints made against the two auctioneers in the manner that they were executing the sale of the charged property were different in nature in the two suits.

28. With regard to the Defendants' assertion that the suit is an abuse of the process of the court, the Plaintiff submits that the suit is meritorious as the Plaintiff has pleaded estoppel and lack of good faith on the part of the 1st Defendant, stating that the latter led the former into negotiations whereby the Plaintiff even got a purchaser to enable the sale to proceed by private treaty.

29. I have considered the application, the affidavits in support thereof and the affidavits opposing the same. Before I set out the issues for determination, it is important for me to reproduce what the court said in its ruling that was delivered in Kisumu HCCOMM No. 69 of 2018 on the application that sought an injunction to restrain the 1st Defendant herein from selling the Plaintiff's charged property in exercise of its statutory power of sale. The court stated thus:

> "21. In the circumstances, the Defendant was entitled to take steps to realize the security.
>
> 22. Nonetheless, the Plaintiff asserted that it would suffer irreparable loss if the Defendant was not restrained from auctioning the suit property.
>
> 23. The Plaintiffs case was that the loss it would suffer, from auctioning of the suit property could not be compensated by an award of damages.
>
> 24. The basis for that contention was that land is unique and that therefore no one parcel can be equated in value to another.
>
> 25. I find that whereas every property may be unique, it would be incorrect to assert that the value of one property cannot be equated to another.
>
> 26. Indeed, the Plaintiff did acknowledge as follows in its submissions;

"The value of the suit property can be ascertained and there is a valid argument that damages would be available."

27. Not only was the value of the suit property ascertainable, the Plaintiff's case had been that the value thereof had been ascertained at the time when the Plaintiffs offered it as security.

28. It was on the basis of the ascertained value that the Plaintiff was now asserting that the Defendant wanted to sell the property at an undervalue.

29. In my considered opinion, when the value of land has been ascertained, and its owner offers it as security for a financial facility, the owner ought not to be permitted, thereafter, to advance the alleged uniqueness of the property, as a basis for obtaining an injunction to stop the lender from realizing the said security.

30. If the property was so unique that the Plaintiff could not dare risk losing it, the Plaintiff should not have offered it as security. By making a conscious choice to offer the property as security, the Plaintiff was effectively telling the lender that in the event of default by the Plaintiff, the lender proceed to take steps to realize the security.

31. Provided that the lender takes the steps required as appears to have happened in this case, the lender would be perfectly entitled to realize the security.

32. In this case, I have found no cogent evidence, on a prima facie basis, to prove that the Defendant had had the property under-valued.

33. In the event, there is no prima facie case with a probability of success.

34. Secondly, I find that the Plaintiff has failed to prove that if the injunction was not granted, it would suffer irreparable loss.

35. The Applicant concluded its submissions by praying;

"..... that it be allowed time to arrange for additional funds to ensure compliance with the contract herein, for purpose of compliance with the terms of the contract between the parties. In the alternative, that the Respondent restructures the loan or instalments to allow the Plaintiff to comfortably pay up the loan."

36. Implicit in the said submission is a concession that the Applicant was not in compliance with the terms of the contract: In plain language the Applicant was in default.

37. In the light of the said default, the Applicant asked the Court to allow it more time to enable it raise additional funds, OR alternative, that the Defendant be required to restructure the loan.

38. If the Court were to order the Defendant to give more time to the Plaintiff, so that the Plaintiff takes necessary steps to enable it become compliant, the Court would be re-writing the contract between the parties.

39. Similarly, if the Court were to order the bank to restructure the terms of the contract, the Court would be re-writing the contract between the parties.

40. Courts of law have no jurisdiction to re-write the terms of a contract between parties. The mandate of the Court is to enforce the contract, by giving effect to the terms which the parties had agreed upon.

41. In conclusion, I find no merit in the application dated 13th January 2021: it is therefore dismissed. The Plaintiff will pay to the Defendant, the costs of the said application."

30. From the pleadings, affidavits, and submissions, the following issues arise for determination:

a. Whether the Plaintiff failed to disclose material facts at the ex parte stage, and if so, whether such non-disclosure warrants the discharge of the interim ex parte injunction issued on 15th July, 2025.

b. Whether the interim ex parte orders issued on 15th July, 2025 were irregular for having a lifespan extending beyond 14 days, contrary to Order 40 Rule 4(2) of the Civil Procedure Rules.

c. Whether the present suit and/or the application dated 14th July 2025 is res judicata in light of Kisumu HCCOMM No. 69 of 2018 and Kisumu MCCC E306 of 2024.

d. Whether the present suit constitutes an abuse of the process of the court under Order 2 Rule 15 of the Civil Procedure Rules, including whether it is frivolous, vexatious, scandalous or amounts to forum shopping.

e. What orders commend the application dated 16th July, 2025.

31. The first issue for determination is whether the Plaintiff failed to disclose material facts at the ex parte stage, and if so, whether such non-disclosure warrants the discharge of the interim ex parte injunction issued on 15th July, 2025.

32. A party seeking ex parte injunctive relief bears a particularly stringent duty of candour, one that requires full, frank and unreserved disclosure of all facts that are material to the court's decision to grant or withhold the extraordinary remedy of interim relief.

33. Such disclosure is required not merely to assist the court in reaching a fair and informed decision but also to ensure that the integrity of the judicial process is preserved, given that the adverse party is absent at the time the orders are sought.

34. In the present case, the Plaintiff approached the court under a certificate of urgency seeking interim restraint of the Defendants' statutory power of sale, a remedy of substantial consequence. It is therefore incumbent upon the court to examine with care whether the Plaintiff discharged its duty to disclose material information bearing on the history of litigation between the parties, particularly where similar reliefs had previously been sought and judicially addressed.

35. The record presented demonstrates beyond contest that Kisumu HCCOMM No. 69 of 2018 involved the same parties, the same charged property and the same form of injunctive relief, namely, an order restraining the 1st Defendant from exercising its statutory power of sale.

36. In that earlier suit, two reasoned rulings were delivered, both declining to grant the Plaintiff an injunction and expressly affirming the 1st Defendant's right to realize the security upon default. The Plaintiff does not deny the existence of these rulings. Instead, it argues that it disclosed the earlier suits by referring to them in paragraph 26 of the plaint. However, placing such disclosure in the plaint, rather than in the very affidavit supporting the ex parte request, does not satisfy the duty of candour.

The court, at the ex parte stage, considers primarily the certificate of urgency, the notice of motion and the supporting affidavit, as those documents are intended to justify the need for urgent intervention without hearing the adverse party. Any disclosure buried elsewhere is not an adequate substitute for direct, explicit and unequivocal revelation.

37. Moreover, the nature of the disclosure contained in paragraph 26 of the plaint was not only insufficient in placement but also inaccurate and incomplete in substance. The Plaintiff stated that Kisumu HCCOMM No. 69 of 2018 "was withdrawn when negotiations began," suggesting a smooth and voluntary termination unrelated to prior rulings. This description omits the critical fact that the court had already dismissed applications for injunctive relief after detailed analysis. The Plaintiff's framing therefore gave the impression that the earlier suit was terminated before any judicial assessment of similar injunctive prayers. This impression was materially misleading. A party does not discharge its duty of candour by offering half-truths or selective disclosures that obscure decisive aspects of prior litigation.

38. The Plaintiff also failed to disclose that its application for stay pending appeal in the earlier suit was only conditionally allowed, that the Plaintiff did not pursue the intended appeal and that the suit was eventually closed after a prolonged period of inactivity. These facts were material because they demonstrated a pattern of seeking interim relief to stall the statutory sale, followed by failure to prosecute the underlying dispute.

39. In ex parte proceedings, history matters, especially when the relief sought has previously been denied. The court must be informed precisely because the question of good faith is central to the equitable nature of injunctive orders. The omission of these facts impaired the court's ability to assess the necessity, propriety and bona fides of granting urgent interim protection.

40. Taking the totality of circumstances into account, I am persuaded that the Plaintiff did not approach the court with the degree of transparency required when seeking ex parte injunctive relief. The non-disclosure was neither technical nor inadvertent; it concerned central issues that went to the heart of the court's discretion. The court's earlier refusal of injunctive relief in comparable circumstances was plainly material and the Plaintiff's failure to place this information forthrightly before the court constituted material non-disclosure.

41. On this ground alone, and consistent with well-established principles on the administration of equitable remedies, the ex parte injunction issued on 15th July, 2025 cannot stand and warrants discharge.

42. The second issue for determination is whether the interim ex parte orders issued on 15th July, 2025 were irregular.

43. The Defendants argue that the ex parte orders were irregular because they were granted for a duration exceeding the 14-day period provided under Order 40 Rule 4(2) of the Civil Procedure Rules. It is correct that the order issued on 15th July, 2025 was expressed to last until 30th July, 2025, giving it a lifespan of fifteen days rather than fourteen. It is however to be noted that situations may arise where it may not be possible to limit the ex parte interim injunction to 14 days, as was the case in this matter, which I will now explain. This court sits on Wednesdays and Thursdays for civil matters. The 14th day of the ex parte interim injunction (the 29th of July, 2025) was a Tuesday, a day for criminal cases, hence the date issued for 30th July, 2025.

44. The purpose of the 14-day limitation is to ensure that ex parte orders remain temporary, minimal and subject to early inter partes scrutiny, thereby reducing the risk of prejudice to the party not heard at the initial stage.

45. While it is true that a court should ordinarily confine ex parte orders within the 14-day timeframe, any reasonably explainable slight, in this case by one day, does/did not significantly alter the effect or prejudice. The court retains jurisdiction, upon inter partes appearance of the parties, to extend, vary or discharge interim orders.

46. Indeed, in many cases, minor irregularities relating to dates or duration can be regularized without undermining the validity of the proceedings, provided no substantial prejudice has occurred. In this case, the order was later extended after the Defendants had participated in the proceedings. By that stage, the court had full power to revisit or reconfigure the interim posture. The irregularity of duration, though noted, therefore does not independently necessitate the discharge of the ex parte orders.

47. Consequently, while the granting of an ex parte interim injunction may at face value point to a procedural lapse, it is not in itself fatal.

48. The third issue for me to determine is whether the present suit and/or the application dated 14th July 2025 is res judicata.

49. The Defendants submit that the present suit and the application dated 14th July, 2025 are rendered res judicata by the earlier proceedings. Res judicata is a doctrine central to the finality of litigation and seeks to prevent re-litigation of matters that have already been conclusively determined by a court of competent jurisdiction. The threshold under Section 7 of the *Civil Procedure Act* requires that the former suit be between the same parties, concerning the same matter directly in issue and finally determined on its merits.

50. In Kisumu HCCOMM No. 69 of 2018, it is clear that while the court delivered two comprehensive rulings declining interlocutory injunctive relief, no final judgment resolving the substantive rights of the parties was ever delivered. The suit did not proceed to full trial, and the issues regarding the validity of the statutory notices, the alleged undervaluation or the contractual obligations were not finally determined. Similarly, Kisumu MCCC E306 of 2024 was struck out purely on jurisdictional grounds, without any determination of substantive questions concerning the charge or the exercise of statutory power of sale.

51. The dismissal of an interlocutory application, even with detailed reasoning, does not equate to a final determination of the suit for purposes of res judicata. Thus, the present suit cannot be barred outright under Section 7 of the *Civil Procedure Act*. The Plaintiff retains the right to pursue a fresh suit where previous proceedings terminated without a merit-based conclusory decision on the reliefs that were sought in the earlier suits.

52. Nevertheless, the earlier rulings are not irrelevant. While not a bar to litigation, they have persuasive significance. They demonstrate how the court viewed similar factual circumstances and may reflect on whether the Plaintiff has consistently approached the court to forestall the exercise of a contractual remedy without materially advancing the dispute to trial. Thus, although res judicata does not apply as a strict legal bar, the history of prior interlocutory refusals remains pertinent to the court's assessment of conduct, credibility and potential abuse of process.

53. The fourth issue for determination is whether the present suit constitutes an abuse of the process of the court.

54. The doctrine of abuse of process exists to protect the court's authority and the fair administration of justice from misuse, manipulation or attempts to obtain collateral advantages. Proceedings may constitute an abuse not because they are res judicata, but because they are filed in a manner that

undermines the orderly and final resolution of disputes. A party who repeatedly files suits or applications designed only to delay the lawful actions of the opposing party, particularly where interim restraints are sought serially, risks crossing into the territory of vexatious conduct.

55. The Plaintiff has filed no fewer than three suits concerning the same charge, the same loan facility and the same intended exercise of statutory power of sale. In each instance, interim injunctions were sought to restrain the bank. In the earlier High Court suit, such injunctions were refused. The Plaintiff subsequently allowed the suit to stagnate and did not prosecute it to conclusion. In the Magistrate's Court suit, the Plaintiff again sought to impede the sale process, only for the suit to be struck out for want of jurisdiction. In the present suit, the Plaintiff once more sought ex parte relief at a moment coinciding with the bank's renewal of attempts to realize its security.

56. This pattern strongly suggests that the Plaintiff's principal objective has been to prevent the sale of the charged property rather than to obtain a final adjudication of the underlying dispute. While litigants are entitled to seek judicial redress, the court must consider the cumulative effect of repeated filings and whether they amount to a tactical attempt to achieve indirectly, through delay and injunctions, what could not be obtained directly in the earlier suits.

57. The Plaintiff's conduct, taken together, reflects a persistent attempt to obstruct the realization of the security through serial recourse to interlocutory processes. Such behaviour verges on abuse of the court process.

58. Striking out a suit is, however, a remedy of last resort. It extinguishes a litigant's opportunity to have a claim adjudicated on the merits. Although the Plaintiff's conduct is concerning, the substantive dispute regarding valuation, negotiations for private treaty sale and compliance with the loan contract has never been determined on a full evidentiary record. The court must balance the need to prevent misuse of process with the fundamental right of access to justice guaranteed to all litigants.

59. In the circumstances, while I find that the Plaintiff's approach to litigation is troubling and borders on vexatious repetition, I am not persuaded that the drastic step of striking out the suit is warranted at this stage. A more proportionate and just response is to lift the ex parte injunctive orders, ensure that the injunctive application is heard and allow the suit to proceed, subject to strict case management to avoid further delays or multiplicity.

60. What orders then commend the notice of motion dated 16th July, 2025?

61. For the reasons elaborated above, I find that the ex parte interim injunction was obtained through material non-disclosure and must be discharged. While the irregularity concerning its duration is noted, it is not independently decisive. The suit is not res judicata, though previous interlocutory refusals remain pertinent. The Plaintiff's conduct approaches, but does not yet meet, the threshold warranting the striking out of the suit. A balanced approach requires that the matter proceed on its merits from this point forward with no further tolerance for delay or multiplicity.

62. Accordingly, I make the following orders.

    a. The ex parte injunction issued on 15th July, 2025 is hereby discharged forthwith.

    b. The prayer to strike out the suit is declined, but the Plaintiff is cautioned that any further conduct amounting to delay or repetitive litigation may attract sanctions, including striking out.

    c. The application dated 14th July 2025 shall be listed for inter partes hearing on priority basis.

    d. Costs of the Defendants' application dated 16th July 2025, shall be in the cause.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 4TH DAY OF DECEMBER, 2025.

JOE M. OMIDO.

JUDGE

For Plaintiff: Mr. Rono For Mr. Yogo.

For Defendants: Mr. Bwire.

Court Assistants: Mr. Ngoge & Mr. Juma.

Mr. Rono: I need time to get instructions if Mr. Yogo will still want to pursue the application dated 14th July, 2025. I seek a mention date.

Mr. Bwire: No objection. They can still reach us on the proposal for sale by private treaty.

Court: Mention on 21st January, 2026 for directions on the application dated 14th July, 2025.