Amendi v Keysian Auctioneers & another (Civil Case E005 of 2025) [2026] KEHC 638 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEHC 638 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VIHIGA

CIVIL CASE E005 OF 2025

JN KAMAU, J

JANUARY 26, 2026

BETWEEN

BILLY AMENDI .... PLAINTIFF

AND

KEYSIAN AUCTIONEERS .... 1ST DEFENDANT

FAMILY BANK .... 2ND DEFENDANT

RULING

1. In his Notice of Motion dated 3rd June 2025 and filed on 4th June 2025, the Plaintiff herein sought a temporary injunction to restrain the Defendants herein and/or any of their agents, workers, employees and/or any persons acting on their behalf from selling by public auction, private treaty or otherwise and/or in any manner dealing or interfering with residential/matrimonial property, LR No N. (sic) Maragoli/Chavakali 1140 and Kakamega Chavakali 1084 (hereinafter referred to as the "subject properties") pending the hearing and determination of the application and suit herein.
2. He further sought that alternatively, an order be made under Section 103(1)(c) of the *Land Act*, 2012 that all further registration or registration of change of ownership, use, possession or title or interest in residential/matrimonial property, of the subject properties in any land registry, Government Department and all other registering authorities be prohibited pending the hearing and determination of the suit herein.
3. In opposition to the said Plaintiff's application, on 17th June 2025, the Defendants filed a Notice of Preliminary Objection dated 16th June 2025 and a Replying Affidavit that was sworn by their advocate, Sylvia Wambani on 16th June 2025.
4. The Plaintiff swore a Further Affidavit on 1st July 2025, in response to the Defendants' Preliminary Objection and Replying Affidavit.

5. On 17th June 2025, this court directed that both the said Notice of Motion application and the Preliminary Objection would be heard together and gave directions on the filing of Written Submissions. The Plaintiff's Written Submissions were dated and filed on 11th September 2025 while those of the Defendants were dated and filed on 12th August 2025. The Ruling in respect of the said Plaintiff's Notice of Motion application dated 3rd June 2025 and filed on 4th June 2025 and the Defendant's Preliminary Objection dated 16th June 2025 and filed on 17th June 2025 was based on the said Written Submissions which the parties relied on in their entirety.

Legal Analysis

6. This court found it prudent to deal with the Plaintiff's Notice of Motion and the Defendant's Preliminary Objection together because if the Preliminary Objection was upheld, it would lead to the automatic dismissal of the said Notice of Motion application. Conversely, if the Preliminary Objection was dismissed, this court would proceed to determine the Notice of Motion application on its own merits.

I. Preliminary Objection

7. In the aforesaid Preliminary Objection, the Defendants contended that this court lacked the jurisdiction to hear and determine the said application as it was res judicata in view of the Plaintiff's Notice of Motion dated 3rd May 2017 filed in Kakamega ELC No 135 of 2017 Billy Amugune Amendi vs Family Bank Limited, the Plaintiff's Notice of Motion dated 19th August 2021 filed in Vihiga HCCC No 3 of 2021 Billy Amugune Amendi vs Family Bank Limited & Another and the Plaintiff's Notice of Motion dated 13th September 2021 in Kakamega MCL & E No E144 of 2021 Billy Amugune Amendi vs Family Bank Limited & Another.

8. They were categorical that the Plaintiff was guilty of mala fides forum shopping and that his application lacked merit, was misconceived, frivolous, embarrassing, scandalous, vexatious and an abuse of the process of this court and that the same ought to be dismissed with costs.

9. They submitted that it was also trite law that a Preliminary Objection ought to be based on a point of law as expounded by the court in Mukisa Biscuits Manufacturing Company Ltd vs West End Distributors [1996] EA 696. They asserted that their Preliminary Objection herein sufficiently met the requisite legal threshold as it was anchored upon the legal doctrine of res judicata.

10. They contended that the foundational principle for consideration by this court was that injunctive orders could not be issued in an interlocutory application where a similar application had already been heard and determined as it would suffer being res judicata. In this regard, they placed reliance on the case of Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 Others, Civil Appeal No 36 of 1996 (Nairobi) (eKLR citation not given) where it was held that there must be an end to interlocutory applications as much as there ought to be an end to litigation.

11. They cited Section 7 of the *Civil Procedure Act* Cap 21 (Laws of Kenya)and further relied on the case of Dina Management Limited vs County Government of Mombasa & 5 Others[2023] KESC 30 (KLR) where it was held that the doctrine of res judicata was founded on public policy and was aimed at achieving two (2) objectives namely, that there must be finality to litigation and that the individual should not be harassed twice with the same account of litigation. They were emphatic that their Preliminary Objection was meritorious and should be allowed as was held in the case of Odhiambo vs Ndiri (Deceased) & 2 Others; Owala (Intended Interested Party) [2024] KEELC 7549 (KLR).

12. On his part, the Plaintiff argued that a preliminary objection should always be on a point of law and the same must be specific on the provisions or sections of the law that are frowned upon and not merely be narrations.

13. He contended that his application herein was not res judicata as no case was pending before any court relating to the subject matter herein and that the said subject matter had not been conclusively heard and determined by any competent court. He pointed out that he had withdrawn the suits mentioned by the Defendant and that the suit herein was the only case in relation to the subject matter herein and that the issues raised before this court were not pending before any other court of competent jurisdiction. He added that the same had not been heard on merit and determined.

14. He added that in all the matters mentioned above and from the onset of this matter, Mukele Moni & Company Advocates who had always been on record for the Defendant had never raised the issue of res judicata thus, the same was an afterthought. He asserted that it was in the interest of justice and fairness that this court dealt with the case herein on its merits and determine the issues raised definitively.

15. He also relied on Section 7 of the *Civil Procedure Act* and the case of Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 Others (Supra) and the case of IEBC vs Maina Kiai & 5 Others Civil Appeal No 105 of 2017 (eKLR citation not given) where it was held that for the bar of res judicata to be effectively raised and upheld on account of a former suit, it had to be proved that the suit or issue was directly and substantially in issue in the former suit, the former suit was between the same parties or parties under whom they or any of them claim, those parties were litigating under the same title, the issue was heard and finally determined and that the court was competent to try the subsequent suit or the suit in which the issue was raised.

16. He pointed out that the orders issued in Kakamega ELC No 135 of 2017 were only temporary and did not determine the suit with finality. He added that in both suits, Kakamega ELC No 135 of 2017 which later became Vihiga HCCC No 3 of 2021 and Kakamega ELC No 144 of 2021, the 1st Defendant was not a party therein and the issues were never heard and determined, thus, there was no final judgment.

17. He argued that for the doctrine of res judicata to succeed, all the elements of res judicata had to be met. He was emphatic that there was no existing suit and/or application currently before a court of competent jurisdiction that related to the issues and the parties herein. He urged the court to find that his application was not res judicata.

18. The law pertaining to the doctrine of res judicata is captured under the provisions of Section 7 of the *Civil Procedure Act* which states that:-

> " No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

19. It was trite law that parties could not evade the doctrine of res judicata merely by adding causes of action in subsequent proceedings. In the case of E.T. vs Attorney General & Another [2012] eKLR, it was held that courts must be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy. It further held that the test was whether or not the plaintiff in the second suit was trying to bring a new cause of action which had already been resolved by a court of competent jurisdiction in another way.

20. Indeed, the intention of this doctrine res judicata was to lock out parties who had had their day in courts of competent jurisdiction from re-litigating the same issues against the same opponents in the court system. Without it, there would be no end to litigation and the judicial process would be rendered a nuisance and brought to disrepute. The foundation of this doctrine, therefore, thus rested in the swift, sure and certain justice in the interest of the public.

21. Although the 1st Defendant was a different firm of Auctioneers, it was clear from the circumstances of the case that the subject matter in the previous litigation in Kakamega ELC No 144 of 2021 and Kakamega ELC No 135 of 2017, which later became Vihiga HCCC No 3A of 2021 and the current application were the same. The case between the Plaintiff and the 1st Defendant herein did not go to the crux of the matter. The 1st Defendant was merely an agent and/or servant of the 2nd Defendant purely for purposes of the 2nd Defendant realising its security.

22. Notably, in his Notice of Motion application dated and filed on 19th August 2021 that was filed in Vihiga HCCC No 3A of 2021, the Plaintiff had sought that the public auction of the subject properties be stopped pending the hearing and determination of the suit therein. In its decision of 24th July 2023, this very court dismissed the said application on the ground that the Plaintiff had not demonstrated any irregularity in the Statutory Notices that the 2nd Defendant had issued therein. On 9th May 2025, the Plaintiff withdrew the suit after the court declined to adjourn the matter as the same had remained undetermined for an inordinately long time.

23. Primarily, withdrawal of the suit did not bar the Plaintiff from filing a fresh suit and application seeking orders restraining the action of the 1st Defendant in the event fresh statutory notices issued did not comply with the law or his right was infringed upon. However, in this instant case, the Plaintiff did not demonstrate that the 2nd Defendant did not serve him the Statutory Notices as was provided in the *Land Act* and Auctioneers' Rules and/or that it had infringed on his rights.

24. The present application was on all fours with the application he had filed in Vihiga HCCC No 3 of 2021. In that regard, this court, therefore, found and held that the Plaintiff's instant application was res judicata by virtue of its substratum being substantially the same as in the Notice of Motion application dated and filed on 19th August 2021 in Vihiga HCCC No 3 of 2021 that this court heard on merit and dismissed with the costs to the 2nd Defendant herein.

II. Notice Of Motion Application

25. This court was aware that it was not the final court and its decision was subject to appeal to the Court of Appeal. It was for that reason that this court found if prudent to consider the merits or otherwise of the present application.

26. In his Affidavit in support of his Notice of Motion dated 3rd June 2025 and filed on 4th June 2025, the Plaintiff confirmed that he was the owner of the subject properties which he referred to as his matrimonial homes. He asserted that the Borrower had demonstrated to the 2nd Defendant her ability to repay the facility and that he had never been notified of the non-payment of the facility. He, nonetheless, pointed out that the 2nd Defendant had charged exorbitant interest and in fact, adjusted the interest upwards without notifying him.

27. He added that the Legal Charge was defective and null and void for want of attestation and non-compliance with the *Land Act*, 2012. He also denied having been served with the Statutory Notices.

28. On their part, the Defendants averred that on or about 4th September 2015, upon the request and instance of one Jeniffer Gesare Miheso (hereinafter referred to as the "borrower"), the 2nd Defendant

herein advanced to her a financial facility of a sum of Kshs 1,000,000/= for the purpose of financing working capital. They pointed out that the facility was secured by Legal Charge over the subject properties in the name of the Plaintiff, a personal guarantee and indemnity by the Plaintiff for the sum of Kshs 1,000,000/= and guarantee and indemnity by the Plaintiff, the registered owner of the subject properties herein.

29. They pointed out that the facility was to be paid in thirty-six (36) equal monthly instalments of Kshs 37,875/= with effect from the first month of drawdown until the facility was repaid in full. They were emphatic that the borrower had a duty to ensure that there were sufficient funds in her savings/current account to meet the repayment obligations on the due dates.

30. They contended that the borrower accepted the offer and upon the execution of the Charge by the Plaintiff, the 2nd Defendant instructed its advocates to perfect the Legal Charge in its favour. They asserted that the borrower defaulted in paying the instalments due under the facility whereupon the 2nd Defendant issued the Plaintiff with the statements of accounts in relation to the facility.

31. They further stated that despite demand, the borrower failed to make good the demand. They argued that as a result of the Plaintiff's failure to fulfil his obligations under the Legal Charge, the 2nd Defendant acquired a valid legal interest over the subject properties which interest could only be extinguished upon the Plaintiff fulfilling his obligations.

32. They further averred that upon the Plaintiff's continued default, the 2nd Defendant proceeded to exercise its statutory power of sale with respect to the subject properties and that it duly complied with all the statutory provisions to enable it realise the subject properties but that despite the issuance of the aforesaid Statutory Notices, the borrower and the Plaintiff failed to remedy the default prompting the 2nd Defendant to instruct the firm of Messrs Topmark Valuers Co Ltd to conduct a professional valuation of the subject properties on 16th April 2024.

33. They stated that the 2nd Defendant instructed the 1st Defendant to proceed with the auction of the subject properties and on 13th March 2025, the 1st Defendant served the Plaintiff with the Notification of Sale and the forty-five (45) days' redemption notice. They added that on 19th May 2025, the 1st Defendant proceeded to advertise the auction of the subject properties in the Standard Newspaper. They asserted that despite several notices having been issued, the Plaintiff failed to regularise his loan account which remained in arrears.

34. They further contended that the Plaintiff had failed to disclose the multiplicity of suits filed with respect to and touching on the subject properties with the intent of misleading the court.

35. They were categorical that in a bid to bar the 2nd Defendant from exercising its statutory powers of sale, on 4th May 2017, the Plaintiff filed Kakamega ELC No 135 of 2017 Billy Amugune Amendi vs Family Bank Limited which was later transferred to Vihiga and became Vihiga HCCC No 3 of 2021 in which he had sought permanent injunctive reliefs restraining the 2nd Defendant from exercising its statutory power of sale over the subject properties.

36. They further asserted that contemporaneous with filing Kakamega ELC No 135 of 2017, the Plaintiff filed a Notice of Motion application dated 3rd May 2017 seeking temporary injunction reliefs restraining the 2nd Defendant from exercising its statutory power of sale over the subject property and that on 8th May 2017, the court issued limited injunction orders restraining the 2nd Defendant from realising its security on parcel No N (sic) Maragoli/Chavakali/1140 and further ordered the 2nd Defendant to serve fresh statutory notices in compliance with the law from which it may thereafter

proceed to exercise its statutory power of sale. They averred that the Plaintiff failed to appeal and/or review the aforesaid orders.

37. They stated that on 13th September 2021, the Plaintiff filed another suit in Kakamega MCL & E No E144 of 2021 Billy Amugune Amendi vs Family Bank Limited. In the said suit, they averred that he sought temporary injunctive reliefs restraining the 2nd Defendant from exercising its statutory power of sale over the subject properties and the court granted ex parte temporary injunctive orders pending the hearing and determination of the application. They averred that on 16th February 2022, he withdrew the said suit.

38. They further pointed out that on 19th August 2021, the Plaintiff filed a Notice of Motion application dated 19th August 2021 seeking temporary injunctive orders but that on 24th July 2023, the court dismissed the application. They contended that the Plaintiff withdrew HCCC No 3 of 2021 formerly ELC No 135 of 2017 on May 2025.

39. They were categorical that the Plaintiff filed all the aforesaid suits to restrain the 2nd Defendant from exercising its statutory power of sale over the subject properties which was a clear demonstration of the abuse of the process of this court and bad faith on his part. They urged this court to stop the same forthwith.

40. They were emphatic that the Plaintiff's application did not attain the threshold for the grant of the orders sought. They asserted that the Plaintiff was guilty of material non-disclosure and had deliberately misled the court. They were emphatic that the Plaintiff was guilty of forum shopping and was hell-bent on being issued with injunctive orders at all costs.

41. They added that the orders sought were highly prejudicial to them and their shareholders and were intended to defeat their rights to property safeguarded by *the Constitution* of Kenya, 2010. They were emphatic that the instant application was mala fides, res judicata and an abuse of the court by virtue of the orders issued in Kakamega ELC No 135 of 2017 and that having approached the court with unclean hands, the Plaintiff was underserving of the equitable reliefs sought. They termed his application as misconceived, misinformed and an abuse of the process of the court that rendered it to be dismissed.

42. In his Further Affidavit that he swore on 1st July 2025 and filed on 2nd July 2025, the Plaintiff denied the averments in the Defendants' Replying Affidavit in their totality. He denied ever being issued with statements of accounts in relation to the facility and statutory notices and denied that the Defendants complied with statutory provisions.

43. The Plaintiff placed reliance on the case of Caliph Properties Limited vs Barbel Sharma & Lawrence Kameiwa Njenga Nairobi ELC Case No 1110 of 2013 (eKLR citation not given) where the court therein reiterated the holding in the case of Giella vs Cassman Brown 1975 EA 358 where it was held that the elements for granting injunctive orders were that an applicant must show a prima facie case with a probability of success, he must also show that he would suffer irreparable injury which would not be adequately compensated by and award of damages and where the court was in doubt, it would decide on the balance of convenience.

44. He argued that he had established a prima facie case with a probability of success. He submitted that the Charge that the Defendants were relying on to dispose of his subject properties was not in conformity with the provisions of Section 103(1) (c) of the *Land Act* that required spousal consent where the Charge property was a matrimonial property and as such the charge was null and void. He added that he was also not served with statutory notices of sale and only discovered about the sale of his properties through a WhatsApp photo shared by a friend.

45. He argued that the Defendants had not furnished him with all the statements relating to the advanced loan and therefore, there was no transparency as to how much money had been paid and what balance was owed to the 2nd Defendant. He averred that the Defendants did not also indicate the steps they had taken to recover the money from the borrower and that their claims against him were of valid concern and ought to be investigated by the court.

46. He further placed reliance on the case of Kibiwott Arap Tarus vs John Kipkemboi Rono & 2 Others ELC Appeal No E01 of 2021 (eKLR citation not given) where it was held that irreparable harm was one that could not be quantified in monetary terms or which could not be cured. He asserted that the subject properties were matrimonial properties and his family would be rendered landless and homeless if the orders sought are not granted. He argued that the prayers sought in the suit herein would also be rendered nugatory. He added that the loss of the said subject properties would be detrimental and substantial and that the same would not be compensated by an award of damages should the suit be successful. He was emphatic that if the court failed to grant the injunctive orders, the subject matter of the suit herein will be non-existent. He called upon the court to prevent an injustice.

47. The Defendants also relied on the case of Giella vs Cassman Brown (Supra) and argued that the Plaintiff had failed to disclose all the material facts to warrant the grant of an injunction as was held in Kenleb Cons Ltd vs New Gatitu Service Station Ltd & Another[1990]eKLR.

48. They further relied on the cases of Mrao vs First American Bank of Kenya Ltd & 2 Others (eKLR citation not given) and Oriental Commercial Bank (formerly Delphis Bank Limited) vs Rajni K. Somaia[2015] KEHC 2693 (KLR) where the common thread was that a prima facie case where based on the materials presented in court, the court should be able to discern that the applicant's right had been infringed.

49. They asserted that the Plaintiff had failed to establish a prima facie case as he did not adduce any evidence to show that his rights would be infringed if they exercised their statutory power of sale. They contended that he had conceded to obtaining financial facility and offering the suit property as security to the 2nd Defendant and that the borrower had defaulted in repaying the facility.

50. They were categorical that by virtue of the Charge, the 2nd Defendant acquired a valid legal interest in the subject properties which interest could only be extinguished upon the Plaintiff fulfilling his obligations under the agreement. They argued that it was the 2nd Defendant's rights that had been infringed on account of the Plaintiff failing to pay outstanding amounts since 2015 and the Plaintiff despite receipt of various demand notices had taken no steps to remedy the default but dragged the 2nd Defendant in court processes in attempt to thwart its statutory right.

51. They cited the Halsbury's Laws of England [Third Edition, Volume 21 paragraph 739, page 352] which defined irreparable injury as injury which was substantial and could never be adequately remedied or atoned for by damages. They relied on the case of James Kipruto Lagat & Another vs Family Bank Limited & Another ELC Case No 121 of 2015 (eKLR citation not given) where it was held that the burden of proof that a plaintiff was likely to suffer irreparable harm that could not be compensated by way of damages lay on that plaintiff and not the defendant. They argued that in the event any loss resulted if the orders sought were declined, then the same could be quantified into damages.

52. They further cited the Black's Law Dictionary, 9th Edition which defined balance of convenience as balancing the relief given to the plaintiff against the injury that would be done to the defendant. They asserted that the balance of convenience tilted towards denying the orders sought in the application as

the Plaintiff had defaulted in repaying the facility and had failed to remedy the same, circumstances that were also addressed in the case of Thathy vs Middle East Bank (K) Ltd (2002) 1 KLR 595.

53. It was not in dispute that the Plaintiff charged his subject properties in favour of the 2nd Defendant herein to secure a loan for the Borrower. It was also not disputed that the Borrower had defaulted in payment of the facility and hence, the 2nd Defendant's statutory power of sale had now crystallised. Having said so, the Defendants could not realise the securities unless they issued the Plaintiff and the Borrower statutory notices that strictly complied with the law.

54. Notably, Section 90(1) of the *Land Act* provides that:-

> "if the chargor is in default of any obligation, fails to pay interest or any other periodic payment or any part thereof due under any charge or in performance or observation of any covenant, express or implied, in any charge, and continues to be in default for one month, the chargee may serve the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be."

55. According to Section 90(2) of the said Act, the notice to be served shall adequately advise the chargor of:-

    a. The nature and extent of the default by the chargor;

    b. If the default consists of the non-payment of any money due under the charge, the amount that must be paid to rectify the default and the time, being not less than three (3) months, by the end of which the payment in default must have been completed.

    c. If the default consists of the failure to perform or observe any covenant, express or implied, in the charge, the thing the charger must do or desist from doing so as to rectify the default and the time, being not less than two months, by the end of which the default must have been rectified

    d. The consequence that if the default is not rectified within the time specified in the notice, the chargee will proceed to exercise any of the remedies referred to in this section in accordance with the procedures provided for in this sub-part; and

    e. The right of the chargor in respect of certain remedies to apply to the court for relief against those remedies.

56. Further, Section 96(2) of the *Land Act* stipulates that:-

> "Before exercising the power to sell the charged land, the chargee shall serve on the chargor a notice to sell in the prescribed form and shall not proceed to complete any contract for the sale of the charged land until at least forty days have elapsed from the date of the service of that notice to sell (emphasis court)."

57. In addition, Rule 15 (d) of the Auctioneers Rules, 1997 provides as follows:-

> "Upon receipt of a court warrant or letter of instruction the auctioneer shall in the case of immovable property—

    a. give in writing to the owner of the property a notice of not less than forty-five days within which the owner may redeem the property by payment of the amount set forth in the court warrant or letter of instruction."

58. The auctioneer also had an obligation under Rule 15 (e) not to sell the immovable property earlier than fourteen (14) days after the first advertisement of the sale of the property. It therefore means that beyond the forty-five (45) days, the chargor has an advantage of a further fourteen (14) days. Rule 15 (e) of the Auctioneers Rules stipulates that:-

> " on expiry of the period of notice without payment arrange sale of the property not earlier than fourteen days after the first newspaper advertisement."

59. The essence of a statutory notice was to accord a debtor all the opportunity to be aware of the exact amount he or she must pay. The sum of monies a chargor had to pay to salvage its charged property had to be certain and not ambiguous. A notice that was issued pursuant to the provisions of Section 90(1) and (2) of the *Land Act* was intended to inform a chargor of its rights and extent of the default as was held in the case of Patrick Maguta Mwangi & Another vs Consolidated Bank Ltd [2012] eKLR. Appreciably, a chargor had a right of redemption before the fall of the hammer during an auction and had to be able to ascertain what its obligation was to redeem its property

60. A perusal of the Defendants' Affidavit and the annextures thereto showed that they had duly served the Plaintiff with all the Statutory Notices and that the same were in compliance with the above-mentioned provisions of law. The Plaintiff had argued that the subject properties were the subject matter of the case herein but that alone could not be the reason for restraining the 2nd Defendant from realising its statutory power of sale where proper statutory notices had duly been served.

61. In the absence of any evidence of invalidity of the statutory notices of sale, on the part of the Plaintiff, this court therefore found and held that the 2nd Defendant's statutory power of sale had crystallised and it had subsequently fully complied with the provisions of the law as far as issuing the Statutory Notices was concerned.

62. Going further, an interlocutory injunction was an equitable relief and the court could decline to grant it if it could be shown that the applicant's conduct pertinent to the subject matter of the suit did not meet the approval of a court of equity. The Plaintiff herein had filed a multiplicity of court cases which he had since withdrawn seeking to restrain the 2nd Defendant from realising its securities. The Borrower could not take a facility, fail to pay and the Plaintiff use the court system to frustrate the 2nd Defendant from proceeding as per their contract. It was evident that the multiplicity of courts actions over the said subject properties was an abuse of the court process evidence that the Plaintiff had approached this court with unclean hands and was thus not entitled to an equitable relief.

63. It was trite law that courts could not re-write the contracts for parties. Instead, courts were expected to let the terms and conditions of a contract run their course and only come to the aid of any party against whom the other party has flouted the said terms and conditions and within the confines of the law.

64. To that extent, this court came to the firm conclusion that the Plaintiff had not met the threshold for being granted injunctive orders that he had sought as set out in the case of Giella vs Cassman Brown (Supra) and the balance of convenience tilted in favour of the 2nd Defendant realising its security. In the event, the Plaintiff suffered any loss, which he failed to demonstrate, the 2nd Defendant which was a bank could compensate him for the loss by an award of damages.

65. The Plaintiff could not litigate in instalments by asserting that the subject properties were matrimonial properties so as to come up with a new cause of action. The end result was that in its decision dated 24th July 2023, this court had already determined that the 2nd Defendant's right to realise the subject properties had already crystallised. It was not, therefore, necessary to rehash the court's determination.

Disposition

66. For the foregoing reasons, the upshot of this court's decision was that the Defendants' Notice of Preliminary Objection dated 16th June 2025 and filed on 17th June 2025 was merited and the same be and is hereby upheld.

67. The Plaintiff's Notice of Motion dated 3rd June 2025 and filed on 4th June 2025 was not merited and the same be and is hereby dismissed.

68. The Plaintiff will pay the 2nd Defendants' costs of the Preliminary Objection dated 16th June 2025 and filed on 17th June 2025 and the costs of his Notice of Motion dated 3rd June 2025 and filed on 4th June 2025.

69. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF JANUARY 2026

J. KAMAU

JUDGE