



**Open Yard Developers Limited & another v Equity Bank (K) Limited & another; Chege (Interested Party) (Civil Case E016 of 2025) [2026] KEHC 476 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 476 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E016 OF 2025  
JM NANG'EA, J  
JANUARY 26, 2026**

**BETWEEN**

**OPEN YARD DEVELOPERS LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**EDGAR KINYANJUI NJIRIRI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EQUITY BANK (K) LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**PHILIPS INTERNATIONAL AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PETER NJIRIRI CHEGE ..... INTERESTED PARTY**

**RULING**

1. The Plaintiffs brings a Notice of Motion Application dated 15<sup>th</sup> April 2025 for reliefs as herein below;-

1. That this Application be certified as urgent and be heard ex parte in the first instance. (sic)
2. That pending the hearing and determination of this Application inter parties, this Honourable Court be pleased to issue a temporary Order of injunction restraining the respondents either by themselves or their agents, servants, or personal representatives from howsoever selling, alienating, trespassing onto, and/or in any manner whatsoever interfering with or otherwise dealing with the following assets;

Kajiado/ Kitengela/38058

Kajiado/ Kitengela/ 38060

Nakuru/Municipality Block 16/820

Nakuru/Municipality Block 16/819



(Hereinafter referred to as Properties) (sic)

3. That pending the hearing and determination of this suit, this Honourable Court be pleased to issue an Order of injunction restraining the Respondents by themselves or their agents, servants or personal representatives from howsoever selling, alienating, trespassing onto, and/or in any other manner whatsoever interfering with or otherwise with the suit properties.
  4. That this Honourable Court be pleased to order the 1<sup>st</sup> Respondent issue the Applicant with certified copies of the loan account for purposes of verification. (sic)
  5. That this Honourable Court orders a joint evaluation and/or an independent evaluation to be conducted on the suit properties. (sic)
  6. That the cost of this application be in the cause.
2. The first and second prayers in the Application are now spent. The 2<sup>nd</sup> Plaintiff swore an affidavit in support of the Motion. It is averred. that on diverse dates the 1<sup>st</sup> Plaintiff obtained loan facilities from the 1<sup>st</sup> defendant totaling to Kshs. 42,494,771/=, charging his properties Kajiado/Kitengela/38058 and Kajiado/Kitengela/ 38060 in favour of the lender. The interested Party guaranteed the loan facilities offering his parcels of land Nakuru/Municipality Block 16/820 and Nakuru/ Municipality Block 16/819 as securities.
  3. According to the 2<sup>nd</sup> Plaintiff, the 1<sup>st</sup> Plaintiff company diligently made repayment of the loan advances, save for a few late remittances. As at the time of bringing this Application, a total of Kshs. 20,032,334.90 had been remitted to the 1<sup>st</sup> Defendant towards liquidation of the debt.
  4. On 14<sup>th</sup> February 2025 the 2<sup>nd</sup> Defendant issued a Proclamation Notice and 45 days redemption Notice to the Plaintiffs under the 1<sup>st</sup> Defendant's instructions seeking payment of a sum of Kshs. 31,996,788-17, or the charged securities be sold off to realize the debt. The 2<sup>nd</sup> Plaintiff said he reacted by requesting for restructuring and merger of the loans into one. He also proposed to pay certain monthly instalments between February 2025 and April 2025. The court is further told that the 1<sup>st</sup> Defendant agreed to the proposal in principle but did not give a written commitment. The Plaintiff duly made payments as he proposed.
  5. The 2<sup>nd</sup> Plaintiff, however, laments that his request for a Statement of Accounts to keep track of the loan balances and/or arrears was ignored. Then on the 7<sup>th</sup> April 2025 he learnt that the charged properties had been scheduled for sale by public auction on 23<sup>rd</sup> April 2025. Further requests for a Statement of Accounts by email never elicited a response.
  6. The Plaintiffs in the circumstances fault the intended sale of the charged properties to recover an alleged loan balance of Kshs. 31,996,788.17. On advice of their legal Counsel, they contend that various legal provisions relating to service of statutory notices of sale were violated. They also think that the debt is much lower than this figure and so the recovery bid is unlawful. The 1<sup>st</sup> Defendant is also accused of failing to carry out valuation of the charged properties before sale, contrary to the law.
  7. For the stated reasons inter alia, the planned sale of the loan securities is impugned.
  8. The 1<sup>st</sup> Defendant's Credit Manager (Francis Gathonjia) offered affidavit evidence in objection to the Application. The Application is attacked as frivolous and an abuse of the court process. While acknowledging execution of the loan contract between the parties, the 1<sup>st</sup> defendant's witness alludes to a first loan facility of Kshs. 15,000,000/= being a bank guarantee in favour of Vivo Energy (K) Limited which the Plaintiffs were required to settle within 7 days of recall by the Guarantor. A second facility



of Kshs. 14,000,000/= was to be repaid in 24 monthly instalments of Kshs. 702,325/= directly from the borrowers' current bank account held by the lender.

9. The Defence witness further avers inter alia that under the terms and conditions of the facilities, the 1<sup>st</sup> Defendant was entitled without notice to consolidate all or then existing accounts as provided for under Clause 10 of the loan contract.
10. The Plaintiffs are also said to have taken another loan of Kshs. 5,000,000/= on 27<sup>th</sup> October, 2023 that resulted in arrears of Kshs. 5,068,631.87. They are accused of breaching the contract leading to arrears amounting to Kshs. 30,416,590.61 excluding interest as at 26<sup>th</sup> April, 2025. It is the 1<sup>st</sup> Defendant's averments that Vivo Energy (k) Limited did recall the first facility of Kshs. 150,000,000, thus obliging, thus the Plaintiffs to pay up as agreed.
11. Regarding the Plaintiffs' complaint of non-supply of the account statements, the 1<sup>st</sup> Defendant affirms that the statements were duly provided to them. The defence witness adds that the Plaintiffs were also at liberty to obtain the statements from any branch of the 1<sup>st</sup> Defendant.
12. While acknowledging receipt of a request to restructure the loan, the 1<sup>st</sup> defendant states that the proposal was unacceptable since the suggested payments were too low and further that the 2<sup>nd</sup> Plaintiff had been listed negatively at the Credit Reference Bureau.
13. Contrary to the Plaintiff's claim, the 1<sup>st</sup> Defendant asserts that the charged properties were valued by Zenith Management Valuers Limited as per copies of exhibited valuation reports dated 22<sup>nd</sup> February 2025 and 12<sup>th</sup> March 2025.
14. The Plaintiffs are in the circumstances said to have approached the court with unclean hands and therefore underserving of the exercise of the court's discretion in their favour.
15. No further evidence in rejoinder was offered by the Plaintiffs. The Interested Party does not seem to have put in a reply to the Application.
16. Only the Plaintiffs and 1<sup>st</sup> Defendant filed submissions.
17. Inter alia, the Plaintiffs' Advocates submit citing the famous case of *Giella vs Cassman Brown Company* that they have established a prima facie with a reasonable chance of success at trial. The court is told that the charged property risks being wasted if injunction is not ordered.
18. The Plaintiffs further lament that the requisite 45 days Notice of Sale was not served upon the 1<sup>st</sup> Applicant and his spouse as well as the Interested Party and his spouse contrary to section 96(2) and (3) of the *Land Act*. Neither was the 40 days Auctioneers redemption notice issued in breach of the law, according to the Plaintiffs. Counsel submit that irreparable loss is occasioned to an Applicant where there is clear breach of the law (see case law in *Joseph Siro Musioma vs Housing Finance Corporation of Kenya Limited & 3 Others* (2008) eKLR cited by the Plaintiffs.
19. The 1<sup>st</sup> Defendant's Advocates also urge the court to be guided by the principles set out in *Giella vs Cassman Brown Company* supra.
20. Failure to rebut averments in the defendants' Replying Affidavit makes the contentions therein undisputed, submit Counsel while making reference to the judicial determination in *Mohamed & Another vs Haidara* (1972) EA 166 & *Kenya Reinsurance Corporation vs R. M. Mutiso* (2009) eKLR in support of this proposition. It is pointed out that the Replying Affidavit shows that exhibited statutory notices were duly served.



21. The Defence Counsel continue to submit that any any loss that may be suffered by the Plaintiffs can be made good by damages. Besides the Plaintiffs are said to be in breach of the contract and so irreparable loss cannot result to them (see Joseph Kiplagat Chebore vs Kenya Women Microfinance Bank Limited (2020) eKLR relied upon by Counsel).
22. Determination of injunction applications including mandatory, prohibitory and permanent injunctions were long settled in the often quoted case of Giella vs Cassman Brown & Company supra cited in the 1<sup>st</sup> Defendant's submissions. The principles are;

“Firstly, 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, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
23. Case law in Mrao vs First American Bank of Kenya Limited & 2 Others (2003) eKLR explains a prima facie case in civil cases as;

“A case which on the material presented, the court or tribunal properly directing itself will conclude that there exists a right which had apparently been infringed by the opposite party as to call for explanation or rebuttal from the latter.”
24. The three limbs above are required to be surmounted sequentially (see Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR). This means that the Applicant has to satisfy each of the three elements to obtain injunction orders.
25. In Showind Industries vs Guardian Bank Limited & Another [2002] 1 EA it was exhorted that temporary injunction pending trial is granted very sparingly, and only in exceptional circumstances such as where the Applicant's case is very strong and straight forward. As an equitable remedy, injunction may be denied where there is misconduct by the Applicant or his equity has been defeated by laches. In Mohamed Khalid Khashoggi vs Equity Bank Limited [2013] it was observed that disputed accounts and interest are not a ground for grant of injunction.
26. No irreparable loss would ordinarily result to a borrower as any damages are foreseeable owing to voluntary charging of property to a lender (see the relevant decision in Wanjohi vs Equity Bank Building Society Limited & 2 Others (2006) eKLR).
27. Having considered the rival contentions of the Parties against the law, I find that the Plaintiffs have not rebutted the 1<sup>st</sup> Defendant's evidence that they obtained the loan's statements of account and that all statutory notices were served, as by means of a further affidavit. Evidence to the contrary from the bar in form of submissions is not admissible.
28. It is also noted that the Plaintiffs admit default in the loan repayment. Disputes as to the amount outstanding is not a ground to allow injunction as shown hereinabove. There is unrebutted affidavit evidence that valuation of the charged properties was done before the attempted sale in compliance with the mandatory requirement of section 97(2) of the *Land Act*.
29. The Application therefore lacks in merit and is hereby dismissed. The costs thereof shall be in the Cause.

**RULING DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JANUARY, 2026.**



**J. M. NANG'EA - JUDGE**

In the presence of:

Plaintiff's Advocate, Mr. Opiyo for Ms Weke.

1<sup>st</sup> Defendant's Advocate, Ms Odhiambo.

2<sup>nd</sup> Defendant, N/A.

Interested Party's Advocate, Mr. Opiyo for Mr. Odhiambo

Court Assistant (Jeniffer)

