



REPUBLIC OF KENYA



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Mediheal Doctors Plaza Eldoret Limited v Bank Of Baroda (K) Limited (Civil Suit E014 of 2025) [2026] KEHC 1825 (KLR) (20 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E014 OF 2025
E OMINDE, J
FEBRUARY 20, 2026**

BETWEEN

MEDIHEAL DOCTORS PLAZA ELDORET LIMITED APPLICANT

AND

BANK OF BARODA (K) LIMITED RESPONDENT

RULING

1. By way of Notice of Motion dated 14th April 2025, the Applicant seeks the following orders;
 1. Spent
 2. Spent
 3. That a permanent injunction do issue to restrain and prevent the Defendants/Respondents by themselves and/or their agents, servants, employees, assigns or otherwise howsoever from proceeding with the intended public auction scheduled for 29th May, 2025 over Eldoret Municipality Block 8/827 or any other auction over the same property pending the hearing and determination of the main suit.
 4. That the costs be provided for.
2. The Application is expressed to be brought under Order 40 Rules 1 and 2 of the Civil Procedure Rules and Sections 1A, IB, 3A AND 63 (e) of the *Civil Procedure Act*. The application is premised on the grounds on the face of it and the averments of Maryline Chepkosgei Langat in the affidavit in support of the application sworn on 14th May 2025.
3. In the said affidavit, she urged that the applicant, which is a renown medical facility, acknowledge having taken a facility with the defendant and have been servicing the same of late but due to the harsh business condition they delayed a bit in having the loan paid on time.



4. That on or about 10th April, 2025 when checking their mails, they found a letter dated 24th March, 2025 intimating that the respondent intends to sell the applicants property vide public auction on 29th May, 2025 despite the fact that no notices were issued prior to the advertisement. She annexed and marked as MCI-1 a copy of the letter and facility agreement.
5. She deposed that if the auction is allowed, then the entire suit and exercise will be rendered nugatory for reasons that they will not be able to recover the suit property. She reiterated that no notices were issued and/or served upon the applicant to enable it correct the default if any and further, that it is their position is that their account is not in default and if it is, they call upon the respondent to bring forth statements of account which they have been constantly failing to provide despite their requests.
6. She further stated that unless the issues raised are dealt with and the law followed, the applicants shall be rendered destitute by a process par incuriam the law. Additionally, that currently, there are subsisting preservative court orders issued in other matters of the same nature and parties and unless the intended sale is stayed, then there shall be contradictory orders which can leave the court in a dilemma. That it is therefore only fair that the sale process is halted until the legality of the same is determined. She urged that the Applicant stands to suffer substantial loss and irreparable damage if the interim orders sought are not granted.

Replying Affidavit

7. In response to the application, the respondent filed a replying affidavit dated 19th May 2025 sworn by Alfred Inganga Arunga, the defendants' Legal Officer. He deposed that on or about 17th December 2014, the Plaintiff and the Defendant executed a charge whereby the Defendant granted the Plaintiff a term loan of Kshs. 215,625,000/=. The charge was in respect of all that property comprised in Eldoret Municipality/Block 8/827. The resultant account under this arrangement was Term Loan Account No. 9XXXXXXXXXX64. He annexed and marked as "AIA 1" a copy of the Charge. He stated that vide a Further Charge dated 18th December 2019, the Plaintiff granted the Defendant a further financial accommodation by way of a loan and or fluctuating overdraft facilities in the sum of Kshs. 100,000,000/=. The resultant account under this arrangement was Overdraft Account No. 9XXXXXXXXXX41 which he annexed and marked as AIA 2.
8. The deponent averred that the Plaintiff defaulted on the terms of the various facilities as it did not make the necessary payments as agreed with the Defendant. That on or about 31st October 2023, the Defendant sent the Plaintiff a letter informing it of its outstanding balances as at 30 October as follows;
 - i. Overdraft Account No. 9XXXXXXXXXX64 - Kshs. 124,782,099/-
 - ii. Term Loan Account No. 9XXXXXXXXXX41 - Kshs, 40,928,000/- He annexed and marked as "AIA 3" a copy of the Defendant's Letter
9. He further deposed that vide a pre-listing notice dated 3rd January 2024, the Defendant informed the Plaintiff of its outstanding balances as follows:
 - i. Overdraft Account No. 9XXXXXXXXXX64 - Kshs. 134,300,550/-
 - ii. Term Loan Account No. 9XXXXXXXXXX41 - Kshs. 36,183,624.29. He Annexed and marked as "AIA 4" a copy of the Defendant's Pre-Listing Notice dated 3rd January 2024.
10. That further, vide a letter dated 2nd February 2024, the Defendant gave the Plaintiff a 14 days' notice to settle the outstanding amounts. In the notice the Defendant informed the Plaintiff of the outstanding balances as follows:



- i. Overdraft Account No. 9XXXXXXXXXXXX64 - Kshs. 136,401,792
 - ii. Term Loan Account No. 9XXXXXXXXXXXX41 - Kshs. 36,668,872.29. He annexed and marked as "AIA 5" is a copy of the Defendant's Letter dated 2nd February 2024. The deponent urged that the outstanding sums do not include unapplied interest from 1st February 2024.
11. He stated that despite receiving the above notices, the Plaintiff did not settle the outstanding balances. That vide a Statutory Notice dated 5th April 2024 from its advocates, the Defendant issued the Plaintiff with a 90 days statutory notice whereby the Plaintiff was informed, among others, not only of the outstanding balances, but also the fact that if the same was not settled, then the Defendant would exercise its statutory power of sale. He annexed and marked as "AIA 6" a copy of the 90 Days' Statutory Notice dated 5th April 2024 together with Registered Post Receipt.
 12. He stated that further, vide a Statutory Notice to Sell dated 3rd January 2025, , the Defendant issued the Plaintiff with a 40 days statutory notice whereby the Plaintiff was informed., among others, not only of the outstanding balances, but also the fact that if the same was not settled, then the Defendant would exercise its statutory power of sale. He annexed and marked as "AIA 7" a copy of the 40 Days' Statutory Notice to sell dated 3rd January 2025 together with Registered Post Receipt.
 13. He denied the averments of paragraphs 6 and 7 of the Supporting Affidavit that the 90 days' notice and 40 days' notice to sell were not issued to the and pointed out that it is surprising that the Plaintiff managed to receive the registered mail from the Auctioneers but did not receive the registered mails in respect of the 90 and 40 days' notices from the Defendant's Advocates. Further, that in view of the fact that the Plaintiff's case is only hinged on non-issuance of statutory notices and the Defendant has not only produced, but also proved that the statutory notices were issued to the Plaintiff, the Plaintiff has not proved a prima-facie case.
 14. He urged that the Plaintiff has not approached this Court with clean hands as it has it has materially not disclosed not only of the fact that the various notices were issued, but also that it has outstanding sums owing to the Defendant. To that end, the Plaintiff is not deserving of the injunctive orders sought herein as whoever comes to equity must come with clean hands. He additionally stated that if the Plaintiff will suffer any damages, then the same can be computed and paid as damages to it after the suit has been heard and determined on merit. Therefore, the Plaintiff will not be at a disadvantage at all. He urged the court to dismiss the application with costs.
 15. The parties were directed to file submissions. The applicant filed submissions dated 25th June 2025 through the firm of Messrs Aloo Romanus & Company Advocates. The Respondent filed submissions dated 17th July 2025 filed through the firm of Messrs Ondati Mogaka & Associates.

Applicants' Submissions

16. On whether the respondent served the applicant with the requisite statutory notice as contemplated in law; counsel submitted that the relevant and applicable law in this instance stems from Section 90 of the Land Act. Further, that the notice under section 90 is the letter dated 5th April, 2024 and therefore, the question that comes up is whether the respondent proved service of the same, which they have failed to do so. Secondly, he posed the question as to whether the notice conforms in terms of content and service to pass the section 90 test.
17. He placed reliance on the case of Moses Kibiego Yator v Eco Bank Kenya Limited NKU E& L No. 426 of 2013 [2014] eKLR and urged that it is the duty of the chargee to prove that the notice was served upon the defaulter, by not only producing the certificate of postage, but proof that the same reached



the defaulter. That the respondent would have produced a delivery note or message from POSTA as is the norm nowadays. In this regard, he maintained that the respondent has failed to prove service.

18. Further, that the respondent owes the applicant a duty of care before the auction as enshrined in the Auctioneers Rules. He urged that Section 97 of the Auctioneers' Rules was correctly interpreted in the case of *Beatrice Atieno Onyango v Housing Finance Company Limited & 3 others* [2020] eKLR and submitted that the respondent was also, through an auctioneer, required to serve the applicant with a notice as contemplated under Rule 15(d) of the Auctioneers Rule 1997. He submitted that nowhere in the response do we see such a notice hence the said auction was clearly marred by a lot of illegalities.
19. On whether the applicant has proved a prima facie case with chances of success, counsel submitted that from the facts adduced above, it is clear that the respondent failed and/ or neglected to conform to the requirements of the *Land Act* and Auctioneers Rules. Further, that the applicant never published in the dailies the auction as require by law. He cited the case of *Giella vs Cassman Brown* [1973] E.A 358 and *Nguruman Limited vs Jan Bonde Nielsen & 2 Others*, CA No. 77 of 2012 on interlocutory injunctions and a prima facie case, urging that it is clear that service of the notices is in doubt and secondly, that there are missing documents e.g. the valuation report. That these are issues that need to be addressed in their entirety and the only way that can be achieved is through a hearing.
20. He urged that the applicant has proved that; a) The respondent has failed to prove service of the notices; b) There is no valuation or public auction that was tabled before court and c) The applicant has proved his case on a balance of convenience. He prayed that the application be allowed.

Respondents' Submissions

21. Learned Counsel for the respondent pointed out that the applicant did not file any further response to the affidavit sworn by Alfred Inganga Arunga. He then reproduced the averments in the affidavit verbatim and as the same has already been produced above, I see no need to repeat the same.
22. Counsel cited Section 131 of the *Land Act* on service of notices with emphasis on section 131(b) and urged that a statutory notice can be legally served by way of registered post and further, that from the copies of the postage receipts, it is the same address belonging to the plaintiff that was used in all instances. He placed reliance on the decisions of the court in *Sarovima Sevens Stars Resort Lodge Ltd v Yetu Sacco Limited & Another* (2024) KEHC 53; (KLR), *ICEA Lion General Insurance Company Ltd v Mary Anyango Odundo* (2021) KEHC 5813 (KLR) 211 KBHC 5813 (KLR), and *Singh Gitau Advocates v Metro Petroleum Limited* (2022) KEHC 263 KLR.
23. Counsel cited the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (Civil Appeals 9 of 2002) (2003) KECA 175 (KLR) and urged that in view of the fact that the Plaintiffs' case is only hinged on non-issuance of statutory notices and the Defendant has not only produced, but also proved that the statutory notices were issued to the Plaintiff. Additionally, that the Plaintiff has not proved a prima-facie case to warrant this Court to exercise its discretion in its favor. He urged that the Applicant has not met the threshold for grant of a temporary injunction and prayed that the application be dismissed with costs.

Analysis & Determination

24. Having addressed my mind to the pleadings as well as the submissions herein, it is my considered opinion that the issues for the determination of the court are;
 - i. Whether an order of injunction should issue
 - ii. Whether a mandatory injunction can issue at the interlocutory stage.



25. On the 1st issue for determination, the law governing the granting of interlocutory injunction is as set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides that: -

“Where in any suit it is proved by affidavit or otherwise—

- (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or [Rev. 2012] Civil Procedure CAP. 21 [Subsidiary] C17 – 165;
- (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”

26. The conditions that a party seeking for the grant of an order of an interlocutory injunction must satisfy are well settled and are as laid out in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) EA 358 and they are as follows: -

“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.”

27. What the court ought to construe to be a prima facie case is as was defined in *Mrao Limited v First American Bank of Kenya* (2003) KLR 125 as follows;

“A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.....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.”

28. The burden of proving a “prima facie” case would invariably lie with the Applicant. In that regard, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen and 2 others* (2014) eKLR, stated that;

“the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

29. The court went further to state that: -

“we reiterate that in considering whether or not a prima facie case has been established, the court does not hold a minitrial and must not examine the merits of the case closely. All that



the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.

Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges.”

30. Again, the Court of Appeal proceeded to state that: -

“the standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the Applicant’s case is more likely than not to ultimately succeed.”

31. Before a Chargee can exercise its statutory power of sale, the law requires it to issue notices to the Chargor as follows:

- a. 90 days’ statutory notice of default, pursuant to Section 90(1) and (2) of the *Land Act*, 2012.
- b. 40 days’ notice of intention to sell, pursuant to Section 96(2) of the *Land Act*, 2012.
- c. 45 days’ redemption notice pursuant to Rule 15(d) of the Auctioneers’ Rules, 1997.
- d. 14 days’ notification of sale, pursuant to Rule 25(e) of the Auctioneers’ Rules, 1997.

32. In regard to (a) above, Section 90 aforesaid provides as follows:

1. If a 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 the performance or observation of any covenant, express or implied, in any charge, and continues to be default for one month, the chargee may serve on the chargor a notice, in writing, to pay the money owing or to perform and observe the agreement as the case may be.
2.
3. If the chargor does not comply within ninety days after the date of service of the notice under, subsection (1), the chargee may —
 - (a) sue the chargor for any money due and owing under the charge;
 - (b) appoint a receiver of the income of the charged land;
 - (c) lease the charged land, or if the charge is of a lease, sublease the land;
 - (d) enter into possession of the charged land; or
 - (e) sell the charged land;

33. On the issue of service of the notices, the Court of Appeal pronounced itself on the issue of proof of service in the case of Nyagilo Ochieng & Another vs. Kenya Commercial Bank Limited [1996] eKLR, where the court made the following observation:

“..... Unless the receipt of statutory notice is admitted, posting thereof must be proved and upon production of such proof the burden of proving non-receipt of such notice or notices shifts to the addressee as is contemplated by section 3(5) of the *Interpretation and General Provisions Act*, Cap 2, Laws of Kenya.”



34. On valuation of the properties, Section 97(1) and (2) of the *Land Act* provide as follows:
- “(1) A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of sale”.
 - (2) A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.
35. All the above considered, it should be noted further that an injunction is an equitable remedy and a party seeking that the court acts in their favour in any such application must not only satisfy the conditions for the granting of an injunction as already laid out in the cited case law, but must also demonstrate more particularly that they have come to court timeously, in good faith and with clean hands in order that the court may look at them with an eye of equity. That said then, can the court safely conclude that this applicant by his conduct deserves that the court looks at his application with such an eye?
36. In answering this question, firstly, the court notes that the Applicant by their own admission acknowledged that for a time, they defaulted in their repayments due to the harsh economic conditions on the one hand, and on the other hand and in the very same affidavit, they deny that they have ever been in default in their repayments. Secondly, the court notes that the depositions made by the Respondent in their Replying Affidavit as regards service of the requisite notices were not rebutted, controverted and or denied by the Applicants by way of a further affidavit.
37. The court further notes that the fact that the notices were issued was indeed admitted by Counsel for the Applicants in his submissions. He also did not contest the certificates of postage therein annexed. However, he submitted that further proof of receipt of the documents ought to have been availed by way of a further delivery note or message from POSTA “as is the norm nowadays”. Counsel however did not avail anything to court to demonstrate how this “new norm” looks like. This being the case, the court shall be guided by herein cited decision of the Court of Appeal to wit Nyagilo Ochieng & Another vs. Kenya Commercial Bank Limited [1996] Eklr.
38. Being satisfied that the uncontroverted proof of postage has been availed by the respondents, I am satisfied that the Applicants were properly and served with the requisite notices. In his submissions, Counsel contends that for reasons that the Respondents have not demonstrated that notices required to be served under the Auctioneers Rules were served upon the Applicant and that a valuation report was also not availed then the matter ought to go to full hearing. The court’s simple response to these issues is that parties are bound by their own pleadings and further that submissions are not pleadings where new issues can be raised. Once the Respondent’s served them with their Replying Affidavit outlining the notices that were issued to them and when, they were at liberty to raise the issue of the further notices now raised in the submissions if indeed the same were not at all served upon them by way of a further affidavit as the court has already pointed out.
39. Further to the above, Counsel also raised in his submissions another reason why in his view, this matter ought to go to full hearing which is that the intended auction was not placed in the local dailies. However, apart from the fact that this issue was raised in the submissions, it should also be noted that it the applicants themselves who deposed that they received via email, the auctioneer’s notice of sale dated 24th March 2025 slated for 25th May 2025. That soon thereafter, and based on this notice, they filed for and obtained interim orders against the said sale. It follows therefore that since there wasn’t



now going to be any sale the same having been stayed by the Applicants themselves, there was nothing for the auctioneer to place in the local dailies.

40. In light of the above, from my summation of the issuance and service of the requisite notices by the Respondents upon the applicants, I am satisfied that the same have prima facie demonstrated that the Applicants were in arrears of the loan advanced, they were duly and properly notified of the fact of the arrears as is required by statute and they ignored the said notification and did not make any attempts to defray the loan amount, that they were thereafter served with all the requisite Statutory Notices as is required of the Respondent under the *Land Act*, 2012 and they also ignored all these notices and only waited to rush to court at the eleventh hour when the realization of the securities charged by the Respondent was imminent. Such conduct in my well-considered opinion flies against all the relevant doctrines of equity that would persuade a court to exercise discretion in favour of these Applicants.
41. On the 2nd issue of whether a permanent injunction can issue at the interlocutory stage, the court notes that in his prayer to court, the applicant has sought for a permanent injunction at this interlocutory stage pending the hearing and determination of the main suit even as Counsel has submitted as if the application was one for a temporary injunction.
42. In the case of *Shepherd Homes Ltd v. Sandham* [1971] 1 CH. 34, Megarry, J. stated:
- “It is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effects than a prohibitory injunction. At the trial of the action, the court will, of course grant such injunctions as the justice of the case requires; but at the interlocutory stage, when the final result of the case cannot be known and the court has to do the best it can, I think the case has to be unusually strong and clear before a mandatory injunction will be granted, even if it is sought in order to enforce a contractual obligation.”
- ...
- On motion, as contrasted with the trial, the court is far more reluctant to grant a mandatory injunction than it would be to grant a comparable prohibitory injunction. In a normal case the court must, inter alia, feel a high degree of assurance that at the trial it will appear that the injunction was rightly granted; and this is a higher standard than is required for a prohibitory injunction.”
43. Having addressed my mind to the issues herein raised as above summarized and given my findings on the same, I am not persuaded and I am not at all satisfied that the case by the Applicant can be termed to be unusually strong and clear as was held in the above cited case to warrant a mandatory injunction at this interlocutory stage. This prayer therefore cannot issue.
44. In light of the above, and all considered, it is my finding that not only is the Applicant’s Application misconceived and bad in law, but that the same also lacks merit for reasons that Applicant has failed to demonstrate that he has a prima facie case with a high probability of success as envisaged in the *Mrao Limited* case (supra). This being the case then, as was held in the case of *Nguruman Limited v Jan Bonde Neilsen* the court need not consider the other two pillars that a party needs to surmount in order to qualify for the grant of an order of injunction, to wit irreparable loss and balance of convenience. Accordingly, the Application is dismissed in its entirety with costs to the Respondents. The interim orders herein issued are now hereby vacated.

READ DATED AND SIGNED AT ELDORET ON 20TH FEBRUARY 2026

E. OMINDE

JUDGE

