

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**

**CIVIL SUIT NO. E240 OF 2025**

**WILLIAM MASONIK MAKO.....**  
**PLAINTIFF**

**VERSUS**

**FINCORP CREDIT LIMITED....**  
**.....DEFENDANT**

**RULING**

- 1.** Before the Court is the **Plaintiff's Motion dated 12/09/2025** in which he seeks **temporary orders of injunction** restraining the Defendant/Respondent and its agents and or servants from selling, transferring, mortgaging damaging and or interfering in any way with his motor vehicle registration no. KCB 413J Prado pending hearing and determination of the application in the first instance and hearing of the suit.
- 2.** On 25/09/2025 on the **certificate of urgency of 12/09/2025, a temporary injunction was granted** to the Applicant pending hearing and determination of the application interpartes but upon conditions that the Applicant would deposit Kshs. 750,000/= as security in court within 30 days failing which the temporary injunction Order would

lapse. The Plaintiff's motor vehicle was also ordered to be released.

3. The application is brought under provisions of **Order 40 Rule 1 & 2 of the Civil Procedure Rules, and Section 1A, 1B & 3A of the Civil Procedure Act**; and supported by the affidavit of the applicant in which he avers that the Loan facility obtained from the defendant was for Kshs. 914,000/= at an interest rate of 3.5% per month and was secured by a chattel mortgage over the subject motor vehicle.
4. The Applicant further posits that the term of the facility was agreed at 36 months with monthly payments of Kshs. 63,199/- and thereof issued post dated cheques to cover the 36 months, that without notice, the defendant repossessed the loan security vehicle, which has caused him to lose business as the defendant intended to refer him to the Credit Reference Bureau (CRB) listing by Metropol Credit Reference Bureau.
5. It is the Applicant's further deposition that the Defendant contravenes the terms and conditions of the lending and thus seeks orders as sought in the plaint and in the first instant order sought in the application.
6. **In opposition to the Application** the Defendant/Respondent filed a replying affidavit sworn on 3/10/2025 by Phoebe Oyondi the Defendant's General Manager - Credit, reiterating the terms of the loan facility

that the interest rate was 3.5% with a penalty in default of 10% per month for any late payment as contained in the letter of offer and the loan agreement as well as maintenance fee of Kshs. 3,500 per month.

She further posits that the Applicant failed to comply with the firms compelling it to instruct Auctioneers to out he failed to settle the same hence compelling it to instruct auctioneers to proclaim the security motor vehicle positing that all necessary notices were given annexed are exhibits marked PI -8 (a) & (b).

7. The Defendant therefore swears that it is clear that the attachment of the vehicle was justified, was lawful and in compliance with the terms of the loan facility as such the orders sought ought not be granted.
8. Parties were directed to file **submissions on 25/09/2025**. As at 5/12/2025, none of the parties had filed submissions. The court will therefore prepare the ruling without the benefit of the parties submissions.

### **Analysis and determination.**

9. The court has perused the court record to determine whether the Applicant/Plaintiff complied with court orders issued on 25/09/2025 for payment of Kshs. 750,000/= to the Defendant within 30 days upon which the Plaintiff's vehicle was to be released as well as for sustaining the temporary injunctions orders.

10. Indeed the vehicle was released to the Plaintiff as directed.
11. I have perused the Plaintiff's loan account at KCB account No. 03000345222, Kitengela Branch that shows the loan balance, as at 4/03/2025 as Kshs. 683,780.
12. Together with the above, I have read the terms and conditions of the loan facility as stated in the Defendant's letter of offer dated 13/03/2025. There is shown interest on the facility then of Kshs. 914,000/= payable within 36 months, maintenance fee of Kshs. 3,500 per month and a late payment at a flat rate of 10% per month on the instalment arrears.
13. The facility was secured by the Plaintiff's vehicle reg. No. KCB 413 J, and payment was by post-dated cheques (36 no) of Kshs. 63,199 per month and 2 postdated cheques of Kshs. 26,380 insurance premium balance.
14. Both the lender and borrower appended their signatures thereto thus validating the terms and conditions to the loan agreement.
15. It is noted that the Plaintiff accepted the terms and conditions by signing an acceptance of the offer on the 13/03/2025 which was also signed by the plaintiff on the same date.
16. I have also perused the Movable Property Security Rights Act, 2017 Agreement dated 10/03/2025 in which both parties executed in agreement with the letter of offer terms. The

motor vehicle registration No. KCB 413J was offered as security.

17. Also considered are the numerous correspondences by the Defendant to the Plaintiff and in particular the letter dated 22/04/2025 wherein the Defendant authorized **Chartton Auctioneers** to repossess the motor vehicle for non-payment of the loan then standing at Kshs. 1,632,764/- and the proclamation notice issued as well as the notification of sale of the vehicle.
18. Clearly, it is obvious that the Defendant failed to comply with the terms of the loan agreement with the Defendant and therefore accordingly in line with the said agreement the Defendant proceeded to issue instructions for the attachment of the security.
19. While the applicant in his Supporting Affidavit says that the attachment was without any legal notice in the repossession of the vehicle, he has failed to state what conditions the Defendant failed to adhere to.
20. He was not shown how he has paid the loan amount; he has not provided any evidence to show full payment of the sum of the loan plus interest and penalties that by executing the loan agreement he agreed to.
21. Going back to the **temporary injunctive Orders issued on 25/09/2025**, the Plaintiff has not provided evidence that he complied with the interim orders; that he paid to the

Defendant Kshs. 750,000/= within the 30 days he was allowed, i.e. on or before the 25/10/2025. The 1<sup>st</sup> injunctive orders lapsed automatically on the 25/10/2025 by close of business.

22. I agree with the Defendant that an injunction being an equitable remedy, the party applying must come to court with clean hands.
23. To that extend therefore, the orders having lapsed there is no orders in place to bar the defendant from recovering the loan balance by attachment and sale of the security vehicle.
24. It is trite that an agreement executed by the parties binds both, unless it is shown by either of the parties that execution of the agreement was not voluntary, was by coercion or it is illegal and unlawful.
25. In the case of **Morjavia v. Patel [2025] KEHC 2930 (KLR)** the court reiterated the long held decision that a contract is constituted when there is an offer, acceptance and consideration which creates a legal relationship. It has been evidenced that the Plaintiff was a party to the above documents, which he voluntarily executed, thus binding himself to the terms and conditions of the agreement.
26. **Section 107 (1) of the Evidence Act** mandates that whoever desires any court to give judgment in its favour as to any legal right or liability is dependent on the existence of facts which he asserts must prove that those facts exist.

27. It is also well established that courts cannot rewrite terms of a contract between parties unless it is proved and demonstrated that coercion fraud or undue influence occurred as held in the case of **National Bank of Kenya Ltd v. Pipepolastic Samkolit (K) Ltd & Another [2001] eKLR.**

28. Premised on the above, the material availed to the court by both parties and the principle of equity that forbids one party from unjustly enriching itself unfairly, at the expense of the other; in this instance, the Plaintiff's continued possession and use of the security vehicle, while failing to pay the loan facility.

29. It is evident that the Defendant continues to suffer loss and is unable to realize its security from the Plaintiff in view of the interim temporary injunction order issued on 25/09/2025 whereas the Plaintiff continues to use the subject security vehicle.

**30. Based on the above, I find no merit whatsoever in the Applicant's/Plaintiff's application dated 12/09/2025. It is dismissed with costs to the Defendant.**

**The temporary injunction orders granted to the Plaintiff/Applicant is vacated and set aside forthwith.**

**Orders accordingly.**

**Delivered Dated and Signed at Nairobi this 5<sup>th</sup> day of  
February, 2026.**

.....

**JANET MULWA.  
JUDGE**

ORIGINAL