

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE E187 OF 2025

JAYABEN INDUBHAI

PATEL.....PLAINTIFF

VERSUS

DIRECT O AUCTIONEERS.....1st

DEFENDANT

UNICOM LIMITED G/T EQUIP

AGENCIES LTD.....2nd

DEFENDANT

I & M BANK LIMITED..... 3RD

DEFENDANT

RULING

1. Before this court for determination is the 3rd Defendant/Applicant's Notice of Motion Application dated 5th June, 2025 brought pursuant to the provisions of **Articles 10, 40, 50 and 159 of the Constitution, Section 26, 30 and 56 of the Land Registration Act, Sections 3 and 18 of the Environment and Land Court Act, Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act and Orders 1 Rule 3, 2 Rule 15, 21 Rule 6, 40 Rule 7 and 51 Rule 3 of the Civil Procedure Rules** seeking the following reliefs:

- i. The orders of injunction given on 30th April, 2025 pending the hearing and determination of the suit be set aside forthwith.**
- ii. The orders of inhibition, inhibiting all the dealings in relation to land parcel number 214/172/Vol. N77 Folio 84 File 7094 Muthaiga Estate, Nairobi County given on 30th April, 2025 pending the hearing and determination of the suit be set aside forthwith.**
- iii. This suit be struck out with costs to the 3rd Defendant.**
- iv. This suit be struck with costs to the 3rd Defendant.**
- v. The Plaintiff and 2nd Defendant, their agents and/or all their proxies who are also parties to the deed of settlement dated 10th June, 2021 be declared vexatious litigants and be barred from filing any future suits and/or applications hereon without leave of this court.**
- vi. Costs of this application be borne by the Plaintiff.**

2. The Motion is premised on the grounds appearing on its face and is supported by the affidavit of Andrew Muchina, the Senior Manager in the 3rd Defendant's Legal Department. He avers that the 3rd Defendant has a direct and identifiable

interest in these proceedings as the chargee under the Mortgage dated 21st May, 2008 over the suit property known as L.R No. 214/172, which was offered by the 2nd Defendant as security for various loan facilities advanced by the bank and that as at 21st February, 2023, the outstanding loan amount stood at over Kshs 2,592,428,607.90/=.

3. According to Mr Muchina, the interim injunctive orders should be set aside for the reasons that this court had no jurisdiction to entertain the application and the suit; that the jurisdiction lies exclusively with the High Court Tax Division; that the suit is *res judicata* as the High Court has severally declined to issue injunctions restraining the Bank from exercising its statutory power of sale being-**HCC No 327 of 2016: Unicom Limited vs I & M Bank; HCC No 355 of 2016: Grishma Kumar Patel & 2 Others vs I & M Bank Limited** and **HCC 420 of 2016** on the 7th May, 2018, 15th November, 2017 and 1st November, 2017 respectively.
4. It was deposed that further, in **Equip Agencies Limited vs I & M Bank Limited and HCC E943 of 2021: Equip Agencies Limited & 5 Others vs I& M Bank**, several rulings have been issued dismissing various applications for injunction being on 3rd June, 2022, 19th September, 2024, 17th October, 2024 and 24th February, 2025.
5. It was deposed by the Senior Manager in the 3rd Defendant's Legal Department that in **Civil Appeal No. E013 of 2025**,

Equip Agencies Limited v I & M Bank Limited, the Court of Appeal, in its ruling delivered on 28th March 2025, held that the intended appeal was not arguable, observing in particular that the 2nd Defendant had failed to honour the deed of settlement dated 10th June 2021.

6. He explained that the High Court has also entered judgment in favour of the bank against the 2nd Defendant based on the terms of the said deed of settlement in various suits *to wit* **HCC No 87 of 2019: Equip Agencies Limited vs I & M Bank Limited & 2 Others; and HCC No 417 of 2018: Equip Agencies Limited vs I&M Bank.**
7. According to Mr Muchina, the Plaintiff lacks locus standi not being a person recognized to seek relief under **Section 103** of the **Land Act** and having no legal interest in the charged property as interest in land is conferred pursuant to **Section 24** of the **Land Registration Act**.
8. It was contended that any interest claimed by the Plaintiff is subordinate to the bank's rights as chargee pursuant to **Section 25(1)(a)** of the **Land Registration Act**. Counsel maintained that the bank's proprietary interest ranks in priority over any interest allegedly acquired by the Plaintiff, in line with **Section 36** of the **Land Registration Act**. On that basis, it was urged that the interim injunctive orders be vacated for non-disclosure of these material facts.

9. Further, he asserted, the suit is an abuse of court process as the 2nd Defendant has filed a similar suit in the subordinate court being **MCC E2493 of 2025: Equip Agencies Limited vs I & M Bank Limited** through which it is enjoying interim orders issued on 16th April, 2025 due for ruling on 17th July, 2025.
10. He stated that in view of the foregoing, the Plaintiff, the 2nd Defendant and their agents should be declared vexatious litigants and be stopped from filing any future suits; that should the suit property be sold, the bank will suffer irreparable harm that cannot be compensated by damages and that the more the bank is delayed in its recovery process, the more the debt increases due to interest and if the trend continues unabated, the debt will exceed the securities.
11. In response, the Plaintiff filed Grounds of Opposition dated the 25th June, 2025 asserting that:
- i. ***The Application herein bears an incurable defect and offends the mandatory provisions of Articles 22, 40, 48, 50, 159 and 160 of the Constitution of Kenya, 2010.***
 - ii. ***The Application seeks to defeat the principle of expeditious disposal of matters/cases as provided under the law.***

- iii. The Application as drawn does not validate if the 1st Defendants are agents for the Intended 3rd Defendant/Applicant neither does it validate the relationship, if any, or collusion between the Plaintiff and the 2nd Defendants.**
- iv. The Application as drawn does not demonstrate what prejudice or loss the Intended 3rd Defendant/Applicant is likely to suffer should this Honourable Court proceed to hear the main suit and deliver its judgment.**
- v. The Intended 3rd Defendant/Applicant is using the machinery of the law to cause an injustice by frustrating and disturbing the Plaintiff's legitimate right to prosecute this suit on her right to property in violation of Article 40 of the Constitution.**
- vi. The unsubstantiated Application is uncalled for since the suit is premised on atrocities/procedural improprieties committed by the 1st and 2nd Defendants and now in collusion with the Intended 3rd Defendant who all along was an unknown entity to the Plaintiff.**
- vii. That the Application raised is a mere technicality which cannot be upheld at the expense of substantive justice, access to justice and the right to a fair hearing since the Intended 3rd**

Defendant/Applicant has not tendered any evidence connecting the Plaintiff to the Defendants' numerous suits with the Intended 3rd Defendant.

viii. The Application offends the immutable rule against the giving of final orders in interlocutory proceedings.

ix. The Application lacks merit and deserves to be dismissed with costs.

12. The Plaintiff also filed a Replying Affidavit on 27th June, 2025. She deponed that the Motion and affidavit are riddled with falsehoods and material misrepresentations intended to mislead the court and that the Motion does not demonstrate if the 1st Defendant is an agent of the 3rd Defendant/Applicant, nor does it establish any relationship or collusion between herself and the 2nd Defendants as alleged.

13. The Plaintiff explained that the court was well guided in granting interim orders and the suit is not *res judicata* and that she is unaware of any other suit pending between herself, the Defendants, and the 3rd Defendant over the same subject matter.

14. She further deponed that she has *locus standi* to bring the suit, explaining that, in breach of trust, officials of the 2nd Defendant, unknown to her and without the consent of any family member, secured credit facilities from unidentified

financial institutions, which facilities may have fallen into default and that the 1st Defendant is now in the process of alienating the suit property by offering it for sale in order to satisfy the alleged default.

15. The Plaintiff further deponed that she is aged 86 years and faces the real risk of losing her matrimonial home and becoming homeless. She stated that she is unaware of any dealings between the 3rd Defendant and the 2nd Defendant or its officials, and that such dealings were carried out stealthily and without the consent or knowledge of other family members.
16. She averred that the suit property has been charged and is now threatened with sale through the 1st, 2nd and 3rd Defendants' collusion. She denied that the suit is an abuse of the court process or that she is a vexatious litigant. The Plaintiff stated that the 3rd Defendant has approached the court with unclean hands and is not entitled to the equitable reliefs sought.

Submissions

17. The 3rd Defendant's Counsel filed submissions on 6th August, 2025. Counsel submitted that this court has no jurisdiction to entertain the matter as the jurisdiction thereof is vested in the High Court which has denied the Plaintiff injunctive reliefs before. Further, it was deponed, the application and suit contravene the doctrine of *res judicata* on account of the previous suits and rulings, as deposed to in the affidavit.

- 18.** Further to the aspects of *res judicata*, Counsel stated, the court in **HCC 87 of 2019: Equip Agencies Limited vs I & M Limited & 2 Others** entered judgment as per the terms of the deed of settlement dated 10th June, 2021. It was submitted that the Plaintiff has no locus to file the suit against the bank seeking an injunction to stop the bank from exercising its statutory power of sale over the charged properties as she is not the chargor and does not have any rights to legitimately challenge the banks statutory power of sale pursuant to **Section 24** of the **Land Registration Act**. In support Counsel cited the case of **Bank of Africa Limited & Anor vs TSS Investment Limited & Others (Civil Appeal E055 of 2022)**.
- 19.** Counsel submitted that it is trite that if an interlocutory injunction has been obtained by means of misrepresentation or concealment of material facts, as is the case herein, the same is liable to be set aside. Reliance in this regard was placed on the case of **Bahadurali Ebrahim Shamji vs AL Noor Jamal & 2 Others[1998]**.
- 20.** It was also urged that the suit constitutes an abuse of the process of the court on account of the noted multiple suits by the 2nd Defendant. It was urged that this court has inherent jurisdiction to bar the Plaintiff from filing any future suits. Reliance in this regard was placed on the case of **James**

Mwakio vs Kenya Commercial Bank Limited
[2014]eKLR

21. No submissions were filed by the Plaintiff as at 17th February, 2026.

Analysis and Determination

22. Having considered the Motion and responses, the issues that arises for determination are:

- i. *Whether the suit should be struck out for want of jurisdiction by this court?*
- ii. *Whether the court should set aside the orders of injunction and inhibition granted on the 30th April, 2025?*
- iii. *Whether the Plaintiff and the 2nd Defendant should be declared vexatious litigants?*

23. Vide the present Motion, the 3rd Defendant seeks, *inter-alia*, the striking out of the suit on the basis that this court lacks jurisdiction to entertain the dispute, contending that the issues raised fall within the exclusive mandate of the High Court.

24. It is further the 3rd Defendant's case that the suit is barred by the doctrine of *res judicata* owing to numerous decisions rendered in the High Court and the Court of Appeal concerning the suit property which is charged property and the exercise of its statutory power of sale. Additionally, it

was argued, the 3rd Defendant lacks *locus standi*, not being the chargor, or a party capable of challenging the bank's statutory remedies.

- 25.** In response, the Plaintiff maintains that this court is properly seized of jurisdiction, arguing that the suit raises distinct questions touching on alleged breach of trust, unlawful dealings over the matrimonial property, and violations of constitutional rights under **Articles 40 and 50** of the **Constitution**.
- 26.** She contends that the proceedings are neither *res judicata* nor an abuse of process, as she was not a party to the earlier suits relied upon by the 3rd Defendant. She denies any collusion with the 2nd Defendant. The Plaintiff further asserts that she has the requisite *locus standi* to institute the proceedings to protect her proprietary and equitable interests in the suit property.
- 27.** That jurisdiction is central in judicial proceedings is a well-settled principle of law. A court acting without jurisdiction acts in vain. All it engages in is a nullity. Nyarangi, JA, in **Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1**, captured that position as follows:

"Jurisdiction is everything. Without it, a court has no power to make one more step... Where a court takes it upon itself to exercise jurisdiction which

it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

- 28.** This principle obligates a court to immediately interrogate jurisdiction once challenged and to down its tools if jurisdiction is lacking. The Supreme Court reaffirmed this position in **In the Matter of the Interim Independent Electoral Commission (Constitutional Application Number 2 of 2011) [2011] KESC 1 (KLR) (20 December 2011)** emphasizing that jurisdiction flows strictly from the Constitution or statute and cannot be assumed through interpretation or convenience.
- 29.** The 3rd Defendant contends that this court has no jurisdiction to entertain the suit, the same being vested in the High Court. The Environment and Land Court and the High Court of Kenya are courts of equal status albeit with different jurisdictions. The scope of the High Court’s jurisdiction is anchored in **Article 165(3)** of the **Constitution**, which, *inter alia*, confers upon it unlimited original jurisdiction in civil and criminal matters, together with the mandate to determine questions concerning whether any right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened.

30. On the other hand, the broad jurisdiction of the Environment and Land court is donated by **Article 162(2)** of the **Constitution** which provides that:

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- (b) the environment and the use and occupation of, and title to, land...”

31. Pursuant to the constitutional mandate above, Parliament enacted the Environment and Land Court Act. **Under Section 13(2)** of the **Act**, the court is vested with jurisdiction to hear and determine disputes concerning environmental protection and planning, land use, title, tenure, boundaries, valuation, compulsory acquisition, land administration and management, as well as matters touching on public, private, and community land and any enforceable interests in land.

32. In **Republic v Chengo & 2 others (Petition No. 5 of 2015) [2017] KESC 15 (KLR)**, the Supreme Court affirmed that the Environment and Land Court (ELC), the Employment and Labour Relations Court (ELRC) and the High Court are courts of equal status but with distinct and specialised jurisdictions. The court emphasized that none of these courts has supervisory authority over the other, and decisions of one cannot be reviewed by another.

- 33.** The Supreme Court further held that **Article 165(5)** of the **Constitution** bars the High Court from entertaining matters reserved for the specialised courts, just as the specialised courts cannot assume jurisdiction reserved for the High Court, thereby reinforcing the constitutional design of autonomous courts exercising separate mandates.
- 34.** Despite the foregoing pronouncement, however, jurisdictional questions have continued to emerge in the nature of “cross-cutting,” “cocktail,” or “mixed grill” matters. These are disputes whose subject matter overlaps the mandates of either of the three courts.
- 35.** The courts have developed two main approaches for determining whether a dispute falls within the jurisdiction of the Environment and Land Court or the High Court.
- 36.** One school of thought applies the “predominant purpose test,” which focuses on the primary objective of the transaction giving rise to the dispute. As explained in ***Suzanne Achieng Butler & 4 Others vs Redhill Heights Investments Limited & Another (2016) eKLR***, jurisdiction depends on whether the transaction mainly concerns land or other services such as construction, with the court considering factors like the language of the contract, the nature of the business, the gravamen of the dispute, and the remedies sought.

37. The alternative approach, articulated by Munyao J in **Lydia Nyambura Mbugua vs Diamond Trust Bank Kenya Limited & Another [2018] eKLR**, emphasises the “predominant issue before the court test.” Under this view, the decisive factor is not the purpose of the underlying transaction but the actual dispute presented for determination. Thus, even where a transaction is primarily financial, the Environment and Land Court would assume jurisdiction if the central issue relates to the use, occupation, or title to land, reflecting a more practical and issue-focused analysis of jurisdiction.

38. The Court of Appeal had an occasion to and dealt with the issue. In **Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates vs Daniel Ochieng Ogola t/a Ogola Okello & Co Advocates [2019] eKLR** it held as follows:

“We reiterate the position taken in Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna (supra), that in construing whether the ELC had jurisdiction in a matter, the consideration must be the dominant issue in the dispute and whether that issue relates to the environment and the use and occupation of, and title to, land.

...[15] The dominant issue in the dispute that was before the learned Judge was the honouring of the professional undertaking, and not the land

transaction between the advocates' clients. The undertaking had nothing to do with the environment, or the use and occupation of land, or title to land. The land transaction that the advocates' clients were engaged in was not in issue. The learned Judge therefore properly rejected the application to have the respondent's suit transferred to the ELC."

- 39.** Guided by the exposition by the Court of Appeal in ***Joel Kyatha(supra)***, the court will adopt the pre-dominant issue test.
- 40.** Vide the present suit, the Plaintiff seeks *inter-alia*, a declaration that the 2nd Defendant holds the suit land in trust for her and that the 2nd Defendant is in breach of trust, an order of permanent injunction restraining, barring, and stopping the intended sale by public auction and an order of inhibition, inhibiting all the dealings in relation to land parcel no 214/172/vol. n77) folio 84 file 7094, Muthaiga Estate, Nairobi County.
- 41.** The Plaintiff states that her late husband, Indubhai Shivabhai Patel, was a director and founding chairman of the 2nd Defendant company, the registered proprietor of the suit property. She avers that she only became aware of the impending disposal of the land on 15th April, 2025, when prospective purchasers visited her residence with a

newspaper advertisement indicating that the property had been scheduled for sale by public auction on 16th April, 2025.

- 42.** She maintains that neither the company nor any member of her family notified her of the intended sale despite her long occupation of the property and her continued possession of the original title documents.
- 43.** The Plaintiff further contends that the suit property constitutes matrimonial and family land held by the 2nd Defendant in trust for her benefit and that of other family members. She alleges that officials of the 2nd Defendant, without her knowledge or consent, procured credit facilities using the property as security and defaulted, thereby prompting the 1st Defendant auctioneer to commence steps towards a forced sale.
- 44.** According to the Plaintiff, the threatened auction amounts to breach of trust, fraud, and unlawful interference with her proprietary and possessory interests, particularly in light of the alleged threats of eviction and denial of access to the home she has occupied for years. She asserts that the dispute arises squarely within the jurisdiction of this court and that no prior proceedings exist concerning the same subject matter.
- 45.** Having carefully considered the pleadings on record, the court is persuaded that the predominant issue for determination is not the recovery of a debt or the

enforcement of financial obligations by the bank, the chargee.

46. Rather, the dispute centers on the legality of the intended alienation of the suit property, which the Plaintiff asserts constitute matrimonial and trust land. The issues raised therefore implicate questions of use, occupation, title, and enforceable interests in land, matters that fall squarely within the jurisdiction of this court.

45. The next contention is as regards whether the Plaintiff has *locus* to institute these proceedings. *Locus standi*, as defined in **Black's Law Dictionary**, is:

"The right to bring an action or to be heard in a given forum."

46. The Court of Appeal in **Alfred Njau & Others v City Council of Nairobi (1982) KAR 229** elaborated that:

"To say that a person has no locus standi means that he has no right to appear or be heard in such proceedings."

47. It is indeed trite that *locus standi* is a threshold issue going to the very competence of a party to move the court. A party who lacks *locus standi* cannot competently move the court, and proceedings founded on such an action are void, akin to proceedings conducted without jurisdiction.

48. The 3rd Defendant contends that the Plaintiff lacks *locus standi* to institute these proceedings or to seek orders restraining the bank's exercise of its statutory power of sale. It was urged that the Plaintiff is neither the chargor nor a party to the charge instrument, and that she has not demonstrated any registrable or proprietary interest in the suit property capable of defeating or suspending the bank's security interest.
49. In that regard, it was maintained that any interest the Plaintiff alleges is, at best, subordinate to the chargee's interest, and cannot found a competent cause of action against the bank. Reliance was placed on **Bank of Africa Limited & another v TSS Investment Limited & others (Civil Appeal E055 of 2022)** for the proposition that a party must demonstrate a legally cognizable interest to legitimately challenge the enforcement of a charge.
50. In the present suit, the Plaintiff seeks substantive declarations that the suit property is matrimonial/family land and that it is held by the 2nd Defendant in trust for her benefit, alongside injunctive and inhibitory relief aimed at preserving the property pending determination of those claims. Whether the pleaded trust and beneficial interest are ultimately proved is a matter for trial.
51. At this stage, the averments disclose a prima facie, justiciable claim anchored on alleged beneficial entitlement

and threatened dispossession from her home, sufficient to entitle her to be heard. Ultimately the plea of want of *locus* fails.

52. Moving on to the plea of *res judicata*, the same is founded on **Section 7 of the Civil Procedure Act, Cap 21** which provides that:

“No court shall try any suit or issue 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 the 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.”

53. The rationale underpinning the doctrine of *res judicata* was succinctly articulated by the Supreme Court in **John Florence Maritime Services Limited & another vs Cabinet Secretary for Transport & Infrastructure & 3 others (Petition No. 17 of 2015) [2021] KESC 39 (KLR)**, as follows:

“...The essence of the res judicata doctrine is further explicated by Wigram, V-C in Henderson v Henderson (1843) 67 ER 313, as follows:... where

a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time” [emphasis supplied].

54. Hence, whenever the question of *res judicata* is raised, a court will look at the decision claimed to have settled the issues in question and ascertain whether the parties are the same, or are litigating under the same title; whether the issues are the same and whether the previous case was fully determined by a court of competent jurisdiction. This test is

summarized in **Bernard Mugo Ndegwa vs James Nderitu Githae & 2 others, (2010) eKLR**, under five distinct heads:

- “(i) the matter in issue is identical in both suits;***
- (ii) the parties in the suit are the same;***
- (iii) sameness of the title/claim;***
- (iv) concurrence of jurisdiction; and***
- (v) finality of the previous decision.”***

55. The 3rd Defendant relies on the judgments entered pursuant to the deed of settlement dated 10th June, 2021 in HCC No. 87 of 2019 and HCC No. 417 of 2018 - Equip Agencies Limited v I & M Bank Limited, to advance the plea of *res judicata*.
56. From the material placed before this court, it is not disputed that those proceedings were between the 2nd Defendant and the 3rd Defendant, together with other corporate entities and individuals, and culminated in orders marking the suits as settled in accordance with the terms of the said deed of settlement. Crucially however, the Plaintiff herein was not a party to those proceedings.
57. While the previous suits may have conclusively determined the contractual and financial obligations as between the chargor and the chargee, the present claim raises distinct questions relating to alleged trust, matrimonial rights and occupation, and proprietary interests asserted personally by the Plaintiff as against the 2nd Defendant, issues which were

neither pleaded nor adjudicated upon in the cited High Court matters.

- 58.** The prior High Court determinations therefore do not bar the present proceedings. Consequently, it is the finding of the court the suit and application is not *res judicata*.
- 59.** Having found the plea for dismissal of the suit to be unmerited, the next issue is whether the interim injunctive orders granted on the 30th April, 2025 should be vacated. The court's power in this regard is expressly provided for under **Order 40** of the **Civil Procedure Rules**. In particular, **Order 40 Rule 7** stipulates as follows:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made thereto by any party dissatisfied with such order.”

- 60.** The foregoing provision does not expressly prescribe the circumstances under which an order of injunction may be discharged, varied, or set aside. Nevertheless, the courts, through established jurisprudence, have developed guiding principles and conditions to be considered in determining whether such orders ought to be discharged, varied, or set aside.
- 61.** In **Troy Medicare Pharmacy Limited v Equity Bank Kenya Ltd & another (Commercial Case E016 of 2024) [2025] KEHC 16978 (KLR) (13 November 2025)**

(Ruling), the court relied on the exposition in **Ochola Kamili Holding Limited vs Guardian Bank Limited (2018) eKLR** thus:

“The court is alive to the fact that interlocutory injunction, being an equitable remedy, would be discharged upon being shown the person’s conduct with respect to matter pertinent to the suit does not meet the approval of the court which granted the orders which is the subject matter and especially where a party upon getting injunction orders sits on the matter and uses the orders to the prejudice of the opponent. The orders of injunction are mainly intended to preserve the subject matter with a view to have expeditious determination but not to oppress another party nor should an injunction be used to economically oppress the other party, or to deny justified repayment of outstanding loan. That once such a post injunction behavior is exposed it would in my view be a ground to discharge an injunction because the order obtained would be an abuse of the purpose for which the injunction was granted. No court would allow its orders to be used to defeat the ends of justice”

62. In the case of *Atlas Copco Customer Finance AB vs Polarize Enterprises (2016) eKLR*, the court distilled the factors that may be considered when faced with a question of discharge, varying or setting aside of an injunction. The court held as follows:

“... It is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to: a. proof that the injunction was obtained by concealment of facts which if presented would have worked against the granting of the injunction; b. a radical change in the circumstances of the suit, such that it is no longer necessary to have the injunction; c. proof that the general conduct of the holder of injunction is such that the court is impelled to discharge the injunction, for instance, where the injunction is being used to intimidate the Defendant or achieve an ulterior purpose; d. proof that the sustenance of the injunction would cause an injustice.”

63. The court is so guided.

64. Vide the Notice of Motion dated 15th April 2025, the Plaintiff sought, *inter alia*, interlocutory orders of injunction and inhibition to restrain and bar the intended sale by public

auction, then scheduled for Wednesday, 16th April 2025 of L.R No. 214/172/Vol. N77 Folio 84 File 7094 (Muthaiga Estate, Nairobi County).

- 65.** On 30th April, 2025, interim injunctive reliefs were granted by this court prohibiting the intended sale by auction and any other dealings with the suit property pending determination of the suit. It is this order that the 3rd Defendant now seeks to have set aside asserting that the orders were obtained in the face of material non-disclosure and against a background of extensive, prior litigation in which the High Court has repeatedly declined to restrain the bank from exercising its statutory power of sale over the same charged property.
- 66.** This court has already pronounced itself on the threshold objections relating to jurisdiction and locus standi, and found that the suit is properly before this court, and that the Plaintiff has demonstrated sufficient interest to be heard.
- 67.** As regards the allegations of non-disclosure and abuse of process said to justify the setting aside of the injunctive orders, the court is unable to make such a finding in the absence of a demonstrable nexus showing that the Plaintiff and the 2nd Defendant acted in concert, particularly noting that the previous suits were instituted by the 2nd Defendant.
- 68.** However, the court cannot ignore the narrower and practical reality that the specific issue of injunctive relief aimed at restraining the intended sale of the property in exercise of

the statutory power of sale has been the subject of repeated litigation.

- 69.** The evidence by the 3rd Defendant demonstrates repeated judicial consideration of applications seeking to restrain the bank's realization of its security through the sale of the suit property, among others. Indeed, the court in HCC No. 420 of 2016, vide the ruling of 24th February 2025 expressly observed: *"I note that this court has pronounced itself on the injunctive relief no less than six times."* The court identified the suit property herein as one of the properties in issue therein.
- 70.** In those circumstances, and bearing in mind the principles governing the setting aside of injunctions, the multiplicity of prior determinations on the same injunctive question militates in favour of discharging the interim orders issued on 30th April 2025, so as to avoid the risk of conflicting decisions.
- 71.** Indeed, although this court has held that it has jurisdiction to determine the issues raised in the Plaint, it was incumbent for the Plaintiff to move the High Court in the various matters that injunctive reliefs have been denied, with a view of convincing it, if at all, of setting aside those orders. Having not done so, the injunctive orders granted by this court not only contradict the High Court orders, but also embarrasses the court.

72. The 3rd Defendant has asked that this court declares the Plaintiff and the 2nd Defendant vexatious litigants and restrain them from filing any further suits and applications. A vexatious litigant is defined in Black's Law Dictionary Tenth Edition as "A litigant who repeatedly files frivolous law suits".

73. The law that governs vexatious proceedings in Kenya is the Vexatious Proceedings Act. **Section 2** of the **Act** empowers the High Court (read ELC) to declare a person a vexatious litigant. It provides:

"If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious proceedings, whether civil or criminal, and whether in the High Court or in any subordinate court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, make an order declaring such person to be a vexatious litigant."

74. A simple reading of **Section 2 (1)** of the Act makes it clear that it is only the Attorney General who has the mandate to institute proceedings to have a person or an entity declared a vexatious litigant.

75. The court opines that the Vexatious Proceedings Act was enacted to protect the court process from abuse through frivolous or vexatious litigation, while at the same time preserving the fundamental right of every person to access justice and to have disputes determined in a fair and public hearing before an independent and impartial court or tribunal, as guaranteed under **Article 50(1)** of the **Constitution**.

76. To safeguard that constitutional right, Parliament deliberately confined the power to institute proceedings seeking to have a person declared a vexatious litigant to the Attorney General. The statutory framework is explicit as to who may move the court in that regard, and the present plea does not fall within that mandate. This plea fails.

77. In the result, the Notice of Motion dated 5th June, 2025 partly succeeds on the following terms:

i. The orders of injunction issued on 30th April, 2025 restraining the sale of Parcel No. 214/172/Vol. N77 Folio 84 File 7094, Muthaiga Estate, Nairobi County, pending the hearing and determination of the suit is hereby set aside forthwith.

ii. The orders of inhibition inhibiting all dealings in respect of Land Parcel No. 214/172/Vol. N77 Folio 84 File 7094, Muthaiga Estate, Nairobi

County, issued on 30th April, 2025 pending the hearing and determination of the suit is hereby set aside forthwith.

iii. Costs shall be in the cause.

Dated, signed and delivered virtually in Nairobi this 26th day of February, 2026.

O. A. Angote
Judge

In the presence of;

Mr. Kiogora Mugambi for Plaintiff

Mr. Anzala holding brief for Waweri for 3rd Defendant

Court Assistant: Tracy