



**Patel v Bank of Baroda & another (Civil Case E035 of 2025)
[2026] KEHC 3106 (KLR) (2 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE E035 OF 2025
JM NANG'EA, J
MARCH 2, 2026**

BETWEEN

JAYANTILAL CHARRTUBHAI PATEL APPLICANT

AND

BANK OF BARODA 1ST RESPONDENT

SPORTLIGHT INTERCEPTS AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicant by way of Notice of Motion Application dated 9th July, 2025 seeks the following reliefs;
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of this suit, this Honourable Court be pleased to grant an order of temporary injunction restraining the Defendants/Respondents whether by themselves, their employees, servants and all such persons acting on their behalf from advertising for sale, selling whether by public auction or private treaty, transferring, letting, charging, alienating or otherwise howsoever interfering with the Plaintiff/Applicant's parcel of land known as LR No. Nakuru Municipality/Block 10/129.
 - iv. That costs of this application be provided for and borne by the Defendants/Respondents.

Applicant's case

2. The Application is premised on grounds thereof and the Supporting Affidavit of the Applicant evenly dated wherein it is averred that the Applicant is the registered proprietor of all that parcel of land known as LR No. Nakuru Municipality/Block 10/129 and that he used the property to obtain a loan of Kshs.



25,995,625.64 from the 1st Respondent which registered a charge in respect thereto. The Applicant further deposes inter alia as follows;

- a. That he has been making payments to service the loan but due to the sustained economic recession prevalent in the country and reduced income as a result, he has been paying considerable amounts vide the current account as monthly installments promptly. The property has been advertised for sale by public auction by the 2nd Respondent;
- b. That the intended sale of the suit property by Respondents' is marred with illegality as no statutory notices were issued to him in flagrant disregard of the provisions of Sections 90 and 96 (2) of the Land Act, and the Applicant is apprehensive that unless this Honourable Court intervenes, the Respondents will proceed to sell the suit property at a lesser amount below its current market value as no forced sale valuation was ever done and in the process the Applicant will suffer irreparable loss that cannot be compensated by damages;

And

- c. That the Application is meritorious and has been filed timeously without inordinate delay, and further that the balance of convenience tilts in favour of the Applicant. The instant application will not in any way affect the Respondents or prejudice their rights.

1st Respondent's case

3. The 1st Respondent opposed the Application through a Replying Affidavit sworn on 30th July, 2025 by Alfred Arunga of its Legal Department . He avers that Medical Stores Limited applied for and obtained a loan facility from the 1st Respondent and was advanced an overdraft of Kshs 21,400,000 and an ad hoc facility of Kshs 1,500,000 with the sanction period from the facilities being 12 months and 2 months respectively, secured by the subject property. It is further averred as follows;
 - a. That a legal charge and three other further charges were registered in favour of the 1st Respondent over the suit property. From 31st January, 2024 the Applicant has allegedly failed to meet his repayment obligations despite being granted sufficient time. As at 25th July, 2025 the total outstanding amount was Kshs. 25,980,350.64. The Applicant and Nakuru Medical Stores Limited were issued with the three (3) months statutory Notice on 6th March, 2024 followed by a further requisite 40-days notice issued on 11th June, 2024 through a postal address provided by the Applicant and Nakuru Medical Store Limited.
 - b. That the 1st Respondent instructed the 2nd Respondent to serve the Applicant and Nakuru Medical Store Limited with the 45 days' Redemption Notice dated 12th May, 2025 when no payment was forthcoming. Sale of the charged property by auction was scheduled to take place on 18th July, 2025.
 - c. That the 1st Respondent has not been approached with a proposal to settle or reduce the outstanding amount and the Application and suit are attempts to infringe on the 1st Respondent's rights. It is further averred that the Applicant has not come to Court with clean hands.
4. The 2nd Respondent did not file a reply. The court directed the Application to be canvassed by written submissions but none of the parties put in submissions.



Analysis and determination

5. I have considered the Application together with the rival Affidavits. The sole issue for determination is whether the Application satisfies the conditions precedent to issuance of an order of temporary injunction pending hearing and determination of the suit.
6. The Court is alive to the fact that orders for injunction are equitable remedies and are mainly intended to preserve the subject matter of the dispute pending its resolution. The Court may not issue orders of injunction to oppress a party or to block justified repayment of an outstanding loan.
7. The cases of *East African Industries vs Trufoods* [1972] EA 420 ; *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 and *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] KECA 606 (KLR) among many other judicial precedents set out the principles guiding determination of interlocutory injunction Applications. The principles are elucidated in the latter decision as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- a. establish his case only at a prima facie level,
- b. demonstrate irreparable injury if a temporary injunction is not granted, and
- c. allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially (See *Kenya Commercial Finance Co. Ltd vs Afraha Education Society* [2001] Vol. 1 EA 86). If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

8. On the matter of a prima facie case, the Applicant alleges non-service of statutory notices and absence of valuation of the charged property. The Respondents have exhibited notices issued and sent to the address indicated on the charge documents. A valuation report is also annexed to the 1st Respondents’ reply. The Applicant has not sought to counter this evidence by further affidavit evidence.
9. While the Applicant exhibits a bank statement showing sporadic deposits into his loan account, the 1st Respondent has not produced statements to counter this for the Court to understand the extent of default. Be that as it may, the last deposit appears to have been made in September 2023, making the contention of ongoing repayment unclear.
10. Once a Chargor defaults, the Chargee’s statutory power of sale crystallizes. Occasional deposits which do not meet contractual obligations do not rectify default. In *Mrao Ltd v. First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, the Court of Appeal explained that a prima facie case is more



than an arguable case. It is instructive that the Applicant does not dispute the claim that he defaulted, only attributing the default to economic challenges he faced.

11. On the basis of the material placed before Court, the Applicant has not therefore demonstrated a prima facie case with a probability of success at trial.
12. On irreparable injury, the Applicant contends that sale of the property would occasion irreparable loss. However, Courts have consistently held that where property is charged to secure a loan, its sale upon default does not amount to irreparable injury as the sale was contemplated. In *Andrew Muriuki Wanjohi vs Equity Building Society Ltd & 2 others* [2006] KEHC 2727 (KLR), the Court held that provided that a lender's charge complies with all legal requirements, the chargee should be permitted to realize the security.
13. The law is that where damages are an adequate remedy, an injunction should not issue. The loss of property through auction, if wrongful, could be compensated in damages. There is no evidence that the 1st Respondent will not be able to repay should it be eventually held that a sale was wrongful or unlawful {(See *Zingo Investment Ltd vs National Bank of Kenya Ltd* [2025] KECA 101 (KLR))}. The Applicant's claim of irreparable injury therefore fails in the circumstances of this case.
14. It is unnecessary to consider the question of where the balance of convenience tilts to in light of the court's finding in respect of the first two limbs of applicable case law above.
15. In the end, the Application dated 9th July, 2025 is found to be devoid of merit and is dismissed, but the costs thereof shall be in the Cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU ON THIS 2ND DAY OF MARCH, 2026.

In the presence of:

The Plaintiff/Applicant's Advocate (Absent).

The 1st Defendant/Respondent's Advocate, Mr Kitonyi.

The 2nd Defendant/Respondent (Absent).

The Court Assistant, Jeniffer.

J. M NANG'EA

JUDGE

