

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
MILIMANI COMMERCIAL & TAX DIVISION
CIVIL CASE NO. E279 OF 2025

HON. JUSTICE ALEEM VISRAM

26TH FEBRUARY, 2026

PREENA CHANDARIA
(Suing on her own behalf and as administrator of
the Estate of Vijay Anilkumar Chandaria)..... 1ST
PLAINTIFF

THE ESTATE OF VIJAY ANILKUMAR CHANDARIA.....2ND
PLAINTIFF

VERSUS

BANK OF BARODA (KENYA) LIMITED.....
.....DEFENDANT

RULING

Introduction

1. Before Court are two applications:- The Plaintiffs' Notice of Motion dated 30th April, 2025, seeking a temporary injunction restraining the Defendant from exercising its statutory power of sale over Villa No. 8 (M8), L.R. No. 18113/17 (IR 112089), Rosslyn Heights (the "suit property"); and the Defendant's

Chamber Summons dated 26th May, 2025, seeking leave to issue a Third-Party Notice against Liberty Life Assurance Kenya Limited (“Liberty”).

2. The Plaintiffs’ application is premised on the contention that a Mortgage Protection Life Insurance policy was in force at the time of the death of the 2nd Plaintiff on 7th December, 2023 and that Kshs. 20,000,000/- ought to have been credited to the loan account. The Defendant disputes the existence of a valid policy at the time of death and asserts default.
3. The Defendant’s application seeks joinder of Liberty on grounds that the dispute substantially turns on whether a valid mortgage protection cover existed and, if so, whether Liberty is liable to indemnify.

The Third-Party Application

4. Order 1, rule 15 of the Civil Procedure Rules permits a Defendant to issue a third-party notice where it claims contribution or indemnity or where issues arise relating to the same subject matter.
5. The Plaintiffs’ case is anchored on the alleged existence and effect of a Mortgage Credit Life Cover. The Defendant maintains that the policy lapsed and that Liberty declined the claim.

6. It is evident from the pleadings, affidavits, and correspondence exhibited, including the insurer's letter declining liability, that Liberty's role is not peripheral. The determination is of the following: -

- a. Whether a valid policy existed at the time of death;
- b. Whether premiums were paid and/or renewed;
- c. Whether medical underwriting requirements were satisfied;
- d. Whether any representation was made capable of binding the insurer;

cannot be conclusively resolved without Liberty's participation in these proceedings.

7. In *Martin Kirima Baithambu vs. Jeremiah Miriti [2017] eKLR*, the court pronounced itself as hereunder in relation to Order 1, rule 15:-

The pragmatic reality has been for courts to add parties in a suit based on guarantee if it is desirable to add such party so that the court can resolve all the matters in controversy effectually and completely. Aptly here would be to invoke the procedure provided under Order 1, rule 15 of the Civil Procedure Rules. I say these things for the sake of jurisprudence.

8. Guided by the above, in the present matter, the dispute between the Plaintiffs and the Defendant is inseparable from the conduct, documentation, and underwriting position of the insurer. To determine the injunction application

without settling that foundational issue would risk fragmented litigation and possibly inconsistent findings.

9. I am satisfied that the threshold under Order 1, rule 15 is met. Liberty's participation is necessary for the "effectual and complete adjudication of all questions in controversy".
10. The Defendant's application dated 26th May, 2025 is therefore allowed. Leave is granted to issue and serve a Third-Party Notice upon Liberty Life Assurance Kenya Limited within fourteen (14) days.

The Injunction Application

11. The Plaintiffs contend that a Mortgage Protection Life Insurance policy was in force at the time of the death of the 2nd Plaintiff on 7th December, 2023, and that a sum of Kshs. 20,000,000/- ought to have been credited to the loan account. The Defendant disputes the subsistence of any valid cover at the material time and asserts default.
12. The narrow but central question emerging is whether a valid and enforceable mortgage protection cover was in place at the time of death. This issue lies at the heart of the dispute and permeates the entire claim.

13. The principles governing the grant of a temporary injunction are settled in *Giella v Cassman Brown* and as restated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others*:-

- i. The Applicant must establish a prima facie case with a probability of success;
- ii. That irreparable harm would result absent the injunction;
- iii. If in doubt, the Court determines the matter on a balance of convenience.

14. With regard to the first limb, the Plaintiffs rely on the Letter of Offer dated 21st July, 2021, which expressly required the borrowers to procure a Mortgage Protection Life Cover as a condition of the facility.

15. It is not disputed that a premium was paid in October 2021, and that a cover was initially in place. The contest arises inter alia as to the following: whether the cover lapsed; whether renewal was required, and, if so; whether the responsibility lay with the Plaintiffs or was tied to representations by the Bank's department; whether underwriting conditions were satisfied; and whether representations were made capable of creating a legitimate expectation that the loan balance stood protected.

16. The insurer's correspondence exhibited by the Defendant asserts that the policy expired on 13th October, 2022, and was not renewed. However, the Plaintiffs

exhibit internal correspondence and representations suggesting that discussions regarding cover limits and refund of premiums were ongoing and that a free cover limit of Kshs. 20,000,000/= was in issue.

17.The question of whether the mortgage protection cover was subsisting at the time of death is therefore not peripheral. It is the core controversy. It is heavily factually contested and turns on documentary interpretation, conduct of parties, underwriting requirements, premium history, and the interplay between the Bank and the insurer, and the Plaintiff.

18.At this interlocutory stage, the Court is not required to conclusively determine that question, nor would it be appropriate to do so. It is sufficient that the Plaintiffs have demonstrated a serious triable issue. Where the central liability of a chargor is directly dependent on whether insurance proceeds ought to have redeemed or substantially reduced the debt. That is not a frivolous contention.

19.I am therefore satisfied that a prima facie case has been established.

20.Moving to the second limb: The suit property is pleaded to be a matrimonial home and based on the facts before this Court the Chargor has since passed away. Sale in the present circumstances would permanently extinguish the Plaintiffs' equity of redemption.

- 21.If it were ultimately determined that insurance proceeds ought to have redeemed or substantially reduced the loan, and the property had in the interim been sold, the harm would not be adequately remedied by damages alone. A family home carries a character that transcends pure monetary valuation.
- 22.The risk here is not merely financial loss but the irreversible alienation of property pending determination of a foundational dispute.
- 23.I am persuaded that irreparable harm has been sufficiently demonstrated.
- 24.Finally, considering the balance of convenience, the Court must adopt the course carrying the lower risk of injustice.
- 25.If the application for injunction is dismissed and the property sold, yet it later emerges that a valid mortgage protection cover existed and the loan ought to have been settled in whole or in part, the injustice would be grave and irreversible.
- 26.Conversely, if the injunction is granted and it later emerges that no such cover existed, the Defendant's prejudice is quantifiable in interest and delay, both of which are matters capable of monetary adjustment.
- 27.The balance of convenience therefore tilts in favour of preservation of the status quo pending full trial.

28.To minimize any prejudice to the Bank, the Plaintiff shall continue to service the loan in the pendency and in accordance with the terms of the contract that are not in dispute.

Disposition

29.In the premises:-

- a. **The Defendant's Chamber Summons dated 26th May, 2025, is allowed. Liberty Life Assurance Kenya Limited is granted leave to be joined as a Third Party. Third-Party Notice to issue within fourteen (14) days.**
- b. **A temporary injunction is hereby issued restraining the Defendant, whether by itself, its agents, servants, or auctioneers, from advertising for sale, selling, transferring, charging, leasing, or in any manner disposing of Villa No. 8 (M8), L.R. No. 18113/17 (IR 112089), Rosslyn Heights pending the hearing and determination of this suit.**
- c. **The Plaintiffs shall, as a condition for injunctive relief set out in prayer (b) above, continue servicing the loan to the extent not disputed.**
- d. **Costs of the respective applications shall be in the cause.**

Dated and delivered virtually via Microsoft Teams this 26th day of February, 2026

**ALEEM VISRAM, FCI Arb
JUDGE**

**In the presence of;
Court Assistant: Godfrey**

.....for 1st Plaintiff
.....for 2nd Plaintiff
.....for Defendant

ORIGINAL