



**Executive Super Rides Limited & another v Auctioneers & another (Civil Appeal (Application) E174 of 2025) [2026] KECA 414 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 414 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E174 OF 2025  
M NGUGI, SG KAIRU & P NYAMWEYA, JJA  
FEBRUARY 27, 2026**

**BETWEEN**

**EXECUTIVE SUPER RIDES LIMITED ..... 1<sup>ST</sup> APPLICANT**

**NORTHERN GALAXY HOTEL ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GARAM INVESTMENTS AUCTIONEERS ..... 1<sup>ST</sup> RESPONDENT**

**GUARDIAN BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for injunction pending the hearing and determination of an appeal from the Ruling and Order of the High Court of Kenya at Nairobi (J.W. Mong'are, J.) dated 13th February 2025 in HCCOMM. No. E550 of 2024)*

**RULING**

1. The applicants, Executive Super Rides Limited and Northern Galaxy Hotel Limited, charged their respective properties known as L.R. No. 2/15 Ngong Road, Kilimani, Nairobi and Title Number Isiolo Township/Block V/4, Northern Galaxy Hotel, Isiolo County, (the charged properties), to secure banking facilities extended by Guardian Bank Limited (the Bank) the 1<sup>st</sup> respondent herein. According to the Bank, the applicants defaulted in the repayment of those facilities whereupon, in a bid to exercise its statutory power of sale, the Bank advertised the charged properties for sale through Garam Investments Auctioneers, the 2<sup>nd</sup> respondent.
2. With a view to stopping the sale of the charged properties, the applicants filed suit before the High Court, being, Civil Case No. E550 of 2024, against the respondents. At the same time, they filed an interlocutory application before the High Court seeking an order of injunction to restrain the respondents “from advertising, offering for sale, disposing of, auctioning, selling by public auction or otherwise interfering” with the charged properties pending the hearing and determination of their suit.



In the same application, the applicants sought an order to compel the Bank to provide full and detailed statement of accounts on the loan facilities extended; and an order for fresh valuation of the charged properties to ascertain their current market value and forced sale value in accordance with Section 97 of the *Land Act*, 2012.

3. The Bank opposed that application and upon hearing it, the High Court (J. Mong'are, J.), in a ruling delivered on 13<sup>th</sup> February 2025, dismissed it. In the ruling, the High Court found that the loan facility extended by the Bank to the applicants was not disputed; that the Bank had fulfilled the statutory prerequisites for the exercise of its power of sale and the power of sale was therefore exercisable; that the applicants had been accorded adequate accommodation to rectify their default but had failed to do so; and that the applicants had not established a prima facie case for the grant of the orders they had sought.
4. Aggrieved, the applicants filed a Notice of Appeal and thereafter lodged an application by Notice of Motion dated 13<sup>th</sup> March 2025 (the subject of this ruling) in which the main prayers are for: an order of status quo to prevent interference with their possession of the charged properties; an injunction to stop the sale of Title Number Isiolo Township/Block V/4, Northern Galaxy Hotel, Isiolo County; and an injunction to restrain the Bank from transferring the charged properties.
5. Eric Kimathi Kirima, a director of the 1<sup>st</sup> applicant deponed in his supporting affidavit sworn on 13<sup>th</sup> March 2025 and in his undated supplementary affidavit, that following delivery of the impugned ruling by the High Court on 13<sup>th</sup> February 2025, the Bank advertised the charged properties for sale by public auction; that L.R. No. 2/15 Ngong Road, Kilimani, Nairobi was sold through public auction held on 11<sup>th</sup> March 2025; and that Title Number Isiolo Township/Block V/4, Northern Galaxy Hotel, Isiolo County was advertised for auction on 17<sup>th</sup> March 2025; and that the object of the present application is to preserve the subject matter of the dispute pending appeal.
6. In a replying affidavit sworn on 27<sup>th</sup> March 2025 by Edna Mokaya, a legal officer of the Bank, it is deponed that L.R. No. 2/15 Ngong Road, Kilimani, Nairobi was indeed sold through public auction held on 11<sup>th</sup> March 2025 and that the application, to that extent, is overtaken by events; that the scheduled auction in respect of Title Number Isiolo Township/Block V/4, Northern Galaxy Hotel, Isiolo County was not successful but the property remains charged to the Bank to secure outstanding facilities.
7. We heard the application on 15<sup>th</sup> October 2025. Learned counsel, Mr. Kariuki Karanja, appeared for the applicants. Learned counsel, Mr. Mutua Molo appeared for the Bank. Mr. Antony Kiprono, learned counsel, appeared for the interested party, being the purchaser of the auctioned property. We have considered the application, the affidavits and the submissions by counsel.
8. It is established that in an application of this nature, the applicant is required to demonstrate that the appeal or intended appeal is arguable, and that absent an order of stay of execution or injunction, the intended appeal if successful, will be rendered nugatory. See *Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] KECA 378(KLR).
9. As regards arguability, counsel for the applicants drew our attention to the memorandum of appeal in which the applicants complain that their right to fair hearing was violated by the failure by the learned Judge of the High Court to consider their further affidavit and submissions; that the exercise of the power of sale by the Bank arose from contested loan arrears; that illegal and exorbitant non contractual interest rates were levied by the Bank; that loan accounts were wrongly merged; and that the Bank clogged the applicants' right to redeem the properties in frustrating their efforts to move the loan to a different bank. It was submitted that the applicants have raised bona fide issues for consideration by



this Court. Bearing in mind that an arguable appeal is not one that will necessarily succeed, we find that the appeal is not frivolous.

10. On the nugatory aspect, the principle is that whether an appeal will be rendered nugatory depends on whether what is sought to be stayed or injunctioned, if allowed to happen, is reversible or damages will reasonably compensate the party aggrieved. In that regard, it was reiterated for the applicants that the Bank frustrated efforts to have Prime Bank take over the loans; and that the transfer of the properties will be irreversible.
11. Counsel for the Bank, on the other hand, supported by counsel for the interested party, submitted that it is not in dispute that L.R. No. 2/15 Ngong Road, Kilimani, Nairobi was indeed sold and the applicants' equity of redemption extinguished; that in any event, the properties having been offered as security, they became commodities liable to disposal unless redeemed. In that regard counsel referred to the decision in *Muotia vs. National Bank of Kenya Limited* [2024] KECA 14 (KLR).
12. In our view, there is merit in the latter submission. Under Section 99 of the *Land Act*, specific remedy by way of damages is provided for wrongful exercise of statutory power of sale. It is not claimed that the Bank would not be able to satisfy an award of damages. We find, therefore, that the applicants have not demonstrated that the intended appeal will be rendered nugatory.
13. Consequently, the applicants' application dated 13<sup>th</sup> March 2025 fails and is hereby dismissed with costs to the 1<sup>st</sup> respondent.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**S. GATEMBU KAIRU, FCI Arb, C.Arb.**

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**JUDGE OF APPEAL**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

