



**Mungai v NCBA Bank Kenya Plc (Commercial Case E015 of 2025)
[2026] KEHC 2806 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL CASE E015 OF 2025
FN MUCHEMI, J
FEBRUARY 27, 2026**

BETWEEN

MOSES NJOROGE MUNGAI PLAINTIFF

AND

NCBA BANK KENYA PLC DEFENDANT

RULING

1. The application dated 18th September 2025 seeks for orders of an interlocutory injunction restraining the defendant whether by itself, its servants, agents or otherwise from recovering any monies, auctioning, selling, disposing of, or in any way interfering with the plaintiff's assets or property in relation to the alleged outstanding loan balances on Account No. 2165060024 pending the hearing and determination of the suit. The applicant further seeks for orders of a temporary injunction restraining the defendant from listing his name and particulars with any Credit Reference Bureau (CRB) in relation to the said loans pending the hearing and determination of the suit.
2. The respondent opposed the application and filed a Replying affidavit dated 11th November 2025.

The Applicant's Case.

3. The applicant states that he is the holder of account number 2165060027 at the respondent's Kahawa Sukari Branch. The applicant avers that unknown to him and without his consent or authority, a stranger or third party, whose identity is peculiarly within the knowledge of the respondent, who due to her negligence and breach of the banker customer relationship, caused to be opened and operated an account number 2165060024. The alleged third party applied for and was advanced two motor vehicle loans registration numbers KDN 117W and KDN 118W using his account as security.
4. The applicant states that the respondent failed to notify him of the said loan applications, disbursements or any related transactions despite its duty to do so. Due to the third party's failure to service the loans, the accounts fell into arrears leading the respondent to repossess and sell the lorries



without his knowledge or involvement. The applicant further states that the respondent is currently demanding that he pays the outstanding balance of the loans amounting to Kshs. 3,987,385.43/- and has threatened to recover the same through auction of his personal assets. Further, the respondent has threatened to adversely list him with the Credit Reference Bureau (CRB).

5. The applicant avers that if an injunction is not granted, he will suffer irreparable harm through loss of property via auction, damage to his credit and reputation and financial distress which cannot be adequately compensated by damages.

The Respondent's Case.

6. The respondent states that sometime in November 2023, the applicant approached the Bank with the intention of taking an asset finance facility and was directed to open a current account after which his loan facility would go through the approval process. On or about 7th December 2023, the applicant opened a current account number 2165060027 with them and executed a hire purchase agreement dated 25th November 2023 where he obtained a hire purchase facility for the sum of Kshs. 11,977,160/- to purchase motor vehicles registration numbers KDN 117W and KDN 118W.
7. The respondent states that it opened a loan account number 2165060024 where the loan facility was posted on 29th December 2023. The respondent further states that it registered the motor vehicles in the joint name of the applicant and the Bank and the applicant informed them that the vehicles were registered in accordance with the Moveable Property Securities Act. The vehicles were then released to the applicant and he acknowledged the same by signing a delivery receipt on 28th December 2023.
8. The respondent avers that once a deposit has been made in a current account the same is linked or posted to the borrower's loan account. The applicant began repaying the loan with the first instalment being paid on 8th April 2024 from his current account and the same was posted on his loan statement.
9. The respondent states that the applicant has not denied that he operates the current account number 2165060027 which he manages and operates and is directly linked to the loan account which was internally opened by the Bank for purposes of managing his loan.
10. The respondent states that the applicant was to repay the loan by way of 72 monthly instalments of Kshs. 270,480/- each plus a financial instalment of Kshs. 288,279.25/-. Further, the applicant was to pay the loan facility without defaulting and in the event of default, the motor vehicles would be repossessed and sold to clear the debt. As a consequence of the default, the respondent states that it issued repossession or collection orders dated 10th April 2025 and May 2025 instructing Joyland Auctioneers to seek the outstanding arrears. The applicant failed to settle the arrears and the suit vehicles were repossessed and valued in preparation for sale.
11. The respondent states that they advertised the motor vehicles for sale and issued a Notice of Sale dated 30th June 2025 notifying the applicant that he was granted 7 days to settle the outstanding balance failing which the sale of the motor vehicles would proceed. The respondent avers that motor vehicle registration number KDN 118W was sold for Kshs. 4,205,001/- and KDN 117W was sold for Kshs. 4,250,000/- and the amounts credited to the applicant's account on 14th July 2025 less costs.
12. Despite the sale of the motor vehicles, the respondent argues that the amount received was not sufficient to clear the outstanding sums owed to them. They therefore wrote to the applicant vide letter dated 22nd August 2025 informing him that his account had an outstanding balance of Kshs. 3,897,385.43/-.



13. The respondent argues that the applicant has always been fully aware of his existing loan facilities with the Bank which default resulted in the repossession on the motor vehicles in his possession and he has even partially paid off the loan sum.
14. The respondent states that the applicant having breached the contractual terms between the parties by defaulting in repaying the financial facilities has thus approached the court with unclean hands and is thus undeserving of the court's injunctive reliefs. The respondent further states that they shall proceed to file a counterclaim against the applicant for the balance of the outstanding loan being Kshs. 4,152,182.51/- as at 11th November 2025.
15. Parties put in written submissions.

The Applicant's Submissions

16. The applicant submits that he has a prima facie case as the loan facilities were initiated through fraudulent means. Further, the applicant submits that he has provided evidence suggesting forgery of signatures and impersonation in execution of the facility document and loan guarantees. The applicant argues that he is the victim of an elaborate commercial fraud perpetuated through the respondent's banking systems and processes. The applicant further argues that the respondent's assumption that the mere existence of account opening forms, loan agreements and logbooks bearing his name is conclusive proof of his participation in the transaction. The applicant submits that the assumption is legally flawed as he denied opening account number 2165060024, denied applying for any asset finance facilities, executing any loan or security documents and taking the financed motor vehicles.
17. The applicant argues that there are numerous glaring inconsistencies and anomalies apparent on the respondent's own records as he is alleged to have taken out substantial asset finance facilities, yet he was never notified of the loan approvals, never received the disbursement advice, never insured the vehicles, never took delivery and was never informed of repossession or sale. The next of kin details attributed to his daughter contain a telephone number that does not belong to her demonstrating that the personal data used to process the loans did not originate from him.
18. The applicant submits that the sale of his property through public auction especially under a cloud of fraud constitutes irreparable harm. The applicant further relies on the case of Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR and submits that the loss of an asset through an allegedly unlawful process pending trial cannot always be compensated by damages. Furthermore dissemination of adverse credit information will severely impact his financial reputation and future borrowing capacity which may be difficult to quantify in damages. To support his contentions, the applicant relies on the case of Eunice Nganga vs Higher Education Loan Board & 2 Others (2020) eKLR.
19. The applicant further submits that once property is sold by public auction, it is lost permanently and cannot be restored to the owner even if the suit ultimately succeeds.
20. The applicant argues that if the injunction is not granted and the property is sold, he will have no effective remedy even if he succeeds in proving fraud at the trial. Conversely if the injunction is granted, the respondent bank can be compensated by interest if the suit fails. The applicant submits that the court can order the maintenance of the status quo to preserve the subject matter of the dispute pending the full ventilation of the issues.



The Respondent's Submissions

21. The respondent refers to the cases of Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR and Nguruman Limited vs Jan Bonde Nielsen & 2 Others CA No. 77 of 2012; (2014) eKLR and submits that the applicant has failed to demonstrate that he has a prima facie case with a probability of success. The respondent argues that it has established that the applicant defaulted in the loan facility and that despite issuing several demands to the application to rectify his account, the applicant failed to do so leaving the Bank with no option but to repossess the security and proceed with the sale. The respondent further relies on the case of Bahadurali Ebrahim Shamji vs Al Noor Jamal & 2 Others Civil Appeal No. 210 of 1997 and submits that applicant has approached this court with unclean hands having concealed from the court the full extent of his dealings with the Bank. Thus having failed to disclose the existence of the hire purchase agreement and the loan facility the applicant has been financing he is guilty of material non-disclosure and cannot now benefit from his deliberate concealment by being granted the injunctive orders he seeks.
22. The respondent submits that although the applicant has alleged that the loan was taken by a stranger and that he was impersonated and his signatures forged, he has not accounted for the monies paid to the bank through his account. The respondent further relies on the case of Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the Estate of Sospeter Mukuru Mbeere (Deceased) vs Stephen Njoroge Macharia [2020] eKLR and submits that the applicant has not produced any evidence to prove the allegation of fraud and given the gravity of the said allegations, the law requires that the party that alleges fraud should strictly prove their allegations and they must not be merely speculating.
23. The respondent submits that the applicant has failed to prove any wrong doing on the part of the Bank and they were well within their contractual and statutory rights to proceed with recovering the outstanding money due to it. The respondent further submits that as the applicant has failed to prove a prima facie case, this Honourable Court need not venture into the other grounds as the three conditions for granting an injunction are considered sequentially. To support its contentions, the respondent relies on the case of Kenya Commercial Finance Co. Ltd vs Afraha Education Society (2001) 1 EA 86.
24. The respondent refers to the case of Nguruman Ltd vs Jan Bonde Nielsen & 2 Others and submits that the applicant has not provided any evidence to show that he stands to suffer irreparable harm and that he would not be adequately compensated by an award of damages. The respondent submits that the balance of convenience tilts in their favour as they have established that they have discharged their obligations as required by law.

Issue for determination

25. The main issue for determination is whether the applicants have met the requisite conditions to warrant the granting of a temporary injunction.

The Law

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction

26. The principles of interlocutory injunction are now well settled. Those principles were set out in East African Industries vs Trufoods [1972]EA 420 and Giella vs Cassman Brown & Co. Ltd [1973]EA 358.



Restating the said principles, Ringera J, (as he then was) in *Airland Tours & Travel Limited vs National Industrial Credit Bank Nairobi (Milimani)* HCCC No. 1234 of 2002 set them out as follows:-

- a. A prima facie case with a probability of success at trial;
- b. The applicant is likely to suffer an injury, which cannot be adequately compensated in damages;
- c. If the court is in doubt about the existence or otherwise of a prima facie case it should decide the application on a balance of convenience;
- d. The conduct of the applicant meets the approval of the court of equity.

27. Similarly, in *Dr. Simon Waiharo Chege vs Paramount Bank of Kenya Ltd Nairobi (Milimani)* HCCC No. 360 of 2001, Ringera J, (as he then was) held:-

“The remedy of injunction is one of the greatest equitable relief. It will issue in appropriate cases to protect the legal and equitable rights of a party to litigation, which have been, or are being or are likely to be violated by the adversary. To benefit from the remedy, at an interlocutory stage, the applicant must, in the first instance show that he has a prima facie case with a probability of success at the trial. If the court is in doubt as to the existence of such a case, it should decide the application on a balance of convenience. And because of its origin and foundation in the equity stream of the jurisdiction of the courts of judicature, the applicant is normally required to show that damages would not be an adequate remedy for the injury suffered or likely to be suffered if he is to obtain an interlocutory injunction. As the relief is equitable in origin, it is discretionary in application and will not issue to a party whose conduct as pertains to the subject matter of the suit does not meet the approval of the eye of equity.”

A prima facie case with a probability of success at trial

28. What then constitutes a prima facie case? In the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125,

“The principles which guide the court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of prima facie case, the former being the lesser standard of the two...In civil cases a



prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly, a standard, which is higher than an arguable case."

29. The record shows that the applicant opened an account with the respondent on 7th December 2023 which was account number 2165060027. The applicant in his affidavit has denied opening the said account number and in his submissions has stated that the information given on the account opening form is false as to the details of his daughter's phone number. Despite the applicant denying opening the said account number he has annexed to his plaint bank account statements of the said account which clearly show that the said account bears his particulars. The statements annexed to his documents are similar to those annexed by the respondent to the replying affidavit. It is clear from the evidence of the parties that the account number 2165060027 is registered in the name of the applicant and operated by him.
30. On further perusal of the record, the respondent has annexed a Hire Purchase Agreement dated 25th November 2023 which shows that the applicant obtained a hire purchase facility for the sum of Kshs. 11,977,160/- to purchase motor vehicles registration numbers KDN 117W and KDN 118W and the vehicles after being registered jointly in the names of both the applicant and respondent were released to the applicant who acknowledged receipt by signing the delivery receipt dated 28th December 2023. The respondent explained that once a loan facility is normally approved and executed by the applicant and the Bank internally opens a loan account which in the instant case was account number 2165060024. The bank then posts the loan facility in the borrower's current account which is linked to the borrower's loan account. On scrutiny of the applicant's current account, the applicant began repaying the loan on 8th April 2024. He continued repaying until he fell into arrears. The agreement of the parties shows that the applicant would repay the loan advanced without defaulting and in the event of default, the motor vehicles would be repossessed and sold to clear the debt. It is noted that the applicant argues that the said loan account was opened by a third party who received a loan from the respondent and fell into arrears and now he is being pursued for the sum of Kshs. 3,987,385.43/- however the applicant has not shown any proof of fraud by the respondent. The applicant has produced a bank statement which he denied is for his loan account. The respondent says that the said statement is for the applicant account and shows that the loan facility was being repaid by the applicant and has been running for several months. The applicant did not raise any alarm during the period the respondent notified him of the arrears and during the subsequent sale of the motor vehicles. The vehicles have already been sold and part of the outstanding loan recovered. It is my considered view that the applicant has not established that he has a prima facie case with a probability of success.

Irreparable Injury

31. In *Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others* [2016]eKLR the court considered Halsbury's Laws of England on what irreparable loss is and stated that:-

"First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages."



32. Similarly, in *Maithya vs Housing Finance Co. of Kenya & Another* [2003] 1 EA 133 at 139 where Honourable Nyamu J, stated as follows:-

“Charged properties are intended to acquire or are supposed to have a commercial value otherwise lenders would not accept them as securities. The sentiment of ownership which has been greatly treasured in this country over the years has in many situations given way to commercial considerations. Before lending, many lenders, banks and mortgage houses are increasingly insisting on valuations being done so as to establish forced sale values and market values of the properties to constitute the securities for the borrowings or credit facilities....Loss of the properties by sale is clearly contemplated by the parties even before the security is formalized. For these reasons, I hold that damages would be adequate remedy and it has not been suggested that the respondent cannot pay damages should it become necessary.”

33. The issue is whether the applicants have demonstrated that they will suffer irreparable loss and that unless the injunction is granted, the loss that will be suffered and that the said loss cannot be adequately be compensated by an award of damages. The applicant submit that he stands to lose his properties due to a loan facility that was fraudulently entered into.
34. The law is clear that allegations of fraud must be specifically pleaded and particulars of fraud alleged must be stated on the face of the pleadings. In the instance case, it is said that the applicant got the loan facility and was repaying the same through his current account. Although he accuses the respondent of fraud, the particulars of such fraud have not been set out in the pleadings. Furthermore, the [Banking Act](#) and the Banking (Credit Reference Bureau) Regulations provide that the respondent is obliged to report all accounts in arrears in excess of over 90 days to the licensed Credit Reference Bureau. As both the applicant and the respondent have established that the loan facility is in arrears, the respondent is obliged by law to report the fraud if any. It is therefore my considered view that the applicant has not demonstrated any irreparable harm that he stands to suffer.

Balance of Convenience Test

35. In the case of *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the court in dealing with the issue on balance of convenience held as follows:-

The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.

36. Having outlined the meaning or explanation of balance of convenience, it is my considered opinion that the balance of convenience tilts in favour of the respondent because the inconvenience caused to them will be much greater than that caused to the applicant.
37. The applicant’s 2nd prayer is for an injunction to restrain the respondent from listing his name with Credit Reference Bureau (CRB) in relation to the outstanding loans. As argued by the respondent, any defaulter of a bank loan is required by law to be listed with CRB for such default. It is not in dispute



that the applicant has an outstanding loan with the respondent. This court has not been convinced that it would interfere with the due process of the law in order to protect the applicant from listing with CRB. In my view, this prayer is misconceived.

Conclusion

38. It is my view, that the applicant has failed to establish a case for granting interlocutory injunctive orders.
39. I find the application not merited and it is hereby dismissed with costs to the respondent.
40. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

