



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCC/E090/2025

SOLOMON NGUI MUTUA AND MONICA MUTUA MULINGE AND 2 OTHERS VS KENYA  
INDUSTRIAL ESTATES LTD

### RULING

1. The application before this court is dated 19th November 2025 by the plaintiff's seeking orders for temporary injunction. The application is supported by 13 grounds and the supporting affidavit of even date by the 2nd plaintiff. She averred that the plaintiffs are the administrators of the estate of the late Frederick Mutua who died intestate on 26th April 2020 and was the registered owner of the parcels of land known as Kwale/Funzi Island/257, Kwale/Funzi Island/98, Kwale/Yungi Island/53, Kwale/Kiwegu Jego/10, Kwale/Kidiani/136, Kwale/Kikoneni/Bumbani 'A'/576 and Kwale/Kikoneni/Bumbani 'A'/601, Kwale/Mchingini/931 hereafter known as the suit properties. She further stated that the suit properties had been charged to defendant for as security for a loan of Kshs. 20,000,000 and that a public auction has been slated for 20th November 2025 without serving them the mandatory 90-day notice under section 90 (1) of the Land Act. Furthermore, the 40 day notice under section 96 (2) of the Land Act was also not served upon the plaintiffs and the deceased.
2. The 2nd plaintiff stated that the defendant relied on a date on the redemption notice issued to Mombasa Uniforms Limited which is the borrower and that the reliance is a grave procedural defect rendering the auction illegal. She further alluded to valuation reports which grossly undervalued and drastically depreciated the value of the suit properties which contravenes the duty of care owed by the defendant under section 97(1) and (2) of the Land Act. She was adamant that if the application is not allowed, the plaintiff stands to suffer irreparable loss which cannot be compensated by damages.
3. In reply, Charity Ndeke; the legal services manager of the defendant narrated the events leading to the auction. She commenced by stating that financial facility of Kshs 20,000,0000 was issued to Mombasa Uniforms Limited vide a letter dated 30th November 2018. This was followed by execution of a legal charge, deed of guarantee and indemnity all dated 3rd December 2018. She added that the defendant and the above borrower entered into a loan agreement also dated 3rd December 2018 and two months after disbursement, the borrower defaulted and arrears started accumulating. This forced the defendant to issue several default notices. She emphasized that she thereafter served the



90 day statutory notice , 40 days notice to sell and 45 days notice of redemption on the charger and the borrower. The deponent stated that the defendant contracted a valuer to ascertain the value and thereafter advertised the intended auction in the local dailies.

4. Furthermore, she avers that the plaintiffs have not demonstrated what irreparable loss they will suffer and the application is not only an attempt to frustrated the legal process but also does not meet the threshold of a temporary injunction.

5. The 2nd plaintiff filed a supplementary affidavit which she swore on 19th January 2026 where she was categorical that the defendant has failed to demonstrate service on the plaintiffs In their capacity as administrators of the estate of Frederick Mutua Mulinge. She further elucidated that service upon the borrower does not constitute service upon the charger. She maintained that the valuation figures are lower than the current market and forced value and no explanation has been given for the depreciation in value. That the defendant's argument on the plaintiff not meeting threshold are misplaced and cannot cure an illegality under the Land Act.

6. Counsel for the plaintiff and defendant filed their able submissions dated 19th January 2026 and 10th February 2026 and the issues for determination are as follows:

- a) Whether the application has merit?
- b) Who bears the costs of the application?

7. Having carefully perused the application, all the responses and the rival submissions by counsel, this court finds as hereunder:

a) Temporary injunctions are provided for under Order 40 rule 1 of the Civil Procedure Rules. The best case which would align with this situation is the Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR) where a similar application had been brought in this court for orders of temporary injunction to stop statutory power of sale by the First American Bank. Kwach JJA. held as follows:

"The principles governing the grant of interlocutory injunctions as set out in Giella v Cassman Brown and Co Ltd [1973] EA 358, have been lucidly analysed by Bosire JA. In recent times a tendency has developed in the Superior Court of treating applications by a mortgagor for a temporary injunction to restrain a mortgagee from exercising his statutory power of sale just like any application for injunction in an ordinary suit. The circumstances in which a mortgagee may be restrained from exercising his statutory power of sale are set out in Halsbury's Laws of England, Vol 32 (4th edition) paragraph 725 as follows: -

"725. When mortgagee may be restrained from exercising power of sale. The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has began a redemption action, or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, the amount which the mortgagee claims to be due to him, unless, on the terms of the mortgage, the claim is excessive."(emphasis added)"

b) Furthermore, currently in Kenya statutory power of sale can only be stopped in two ways:

- i. Where there is a defective notice or irregularity in the exercise of statutory power of sale.
- ii. Where the charger has applied for relief under section 90 of the Land Act.

In this case, the plaintiffs are purely challenging the statutory notices that the defendant claims to have served upon them. In the Mrao case above, the first ingredient before grant of a temporary injunction is whether the applicant has established a prima facie case. Bosire JJA in the Mrao case held as follows:



“So what is a prima facie case? I would say that in civil cases it 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 been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

c) The plaintiff have vehemently denied being served with the necessary statutory notices while the defendant has vigorously insisted that they did serve notices. The statutory notice of power of sale is dated 4th April 2023 and shows the stamp of the borrower only. There is an imputation at the bottom of all the notices that it was served by postal address. There is no evidence of service as is mandated under Order 6 rule 6. It behooves the court to also remind the defendant that an injunction is an equitable relief which requires that a party approaches the court with clean hands and the court emphasizes this because it is a requirement that the chargee gives notice to the spouse of the charger atleast 40 days before such sale and there is no evidence of such notice in this case as required by section 96 (3) (c) of the Land Act. The spouse can be identified as Monica Kanyasya form the spousal consent attached to the charge herein. The court finds that the plaintiffs have prima facie case.

d) The next ingredient would be whether the plaintiffs would suffer irreparable loss and in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) the court of appeal held as follows:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

The court is convinced with counsel’s argument that the administrators will lose their equity of redemption if the auction is allowed.

e) The last ingredient is whether there is a balance of convenience which only applies where there is doubt on the two ingredients above as was held in *Giella -Vs- Cassaman Brown Co. Ltd* [1973] EA 358. The court is not in doubt and therefore finds that the application has merit.

8. Therefore, the application is allowed and pending the hearing and determination of the suit, the Defendants and/or its servants, employees, and agents are restrained from advertising, purporting to advertise, selling- either by private treaty or public auction or in any way, purporting to sell, dispose off, and/or deal with the aforementioned properties., pending the hearing of the suit.

9. The matter be mentioned on the 15th day of April 2026 for pretrial conference.

10. Costs in the cause.

11. It is so ordered.

Dated, signed, and delivered in Open Court/Online through MS TEAMS, this .....25th... day of ...February..... 2026.

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CIVIL  
DATE: 2026-02-27 16:10:31

