

that the defendant be ordered to refund the over-payments made by the applicant.

2. The applicant avers that it was advanced a loan of Ksh. 49 695 000 by the defendant in year 2011 to construct hotels. A dispute arose prompting the plaintiff to file a suit Nyahururu ELC No. 443 of 2017. That parties recorded a consent settling the matter in the following terms;

“1. That the full and final amount due and owing to the plaintiff by the defendant is Kenya Shillings Fifty Three Million (Kshs. 53,000,000/=) only.

2. That the amount to be paid by the plaintiff to the defendant to carter for Advocates fee and the costs of the suit is Kenya Shillings One Million Two Hundred and Fifty Thousand (Kshs. 1,250,000/=) only.

3. That so far the plaintiff out of the total aforementioned figures in 1 & 2 above

amounting to Kenya Shillings Fifty Four Million Two Hundred and Fifty (Kshs. 54,250,000/=), has been paid Kenya Shillings Twenty One Million Eight Hundred Thousand (Kshs. 21,800,000/=) leaving a balance of Kenya Shillings Thirty Two Million Four Hundred and Fifty Thousand (Kshs. 32,450,000).

- 4. That the said balance of Kenya Shillings Thirty Two Million Four Hundred and Fifty (Kshs. 32,450,000/=) shall be paid in full and cleared funds on or before 30th June 2019.**
- 5. That the application dated 6th June 2017 be and is hereby spent.**
- 6. That High Court Environment and Land Division Case No. 443 of 2017 be and is hereby withdrawn with no orders as to costs.**

7. That in default of paragraph 4 above the defendant is at liberty to commence legal proceedings to recover the same”.

- 3.** The applicant avers that it has been complying with the terms of the consent, but the defendant made a demand of Ksh 76 209 212 which is absurd and illegal as he has serviced the loan of Ksh 49 965 000 to the tune of Ksh 90 704 355.
- 4.** The applicant therefore contends that the Notice to Sell is illegal.
- 5.** In opposition thereof, the defendant filed Grounds of Opposition stating that the suit is res judicata to Nyahururu ELC 443 OF 2017, that this suit is an abuse of the court process in view of the consent recorded in the older suit and that the applicant did not comply with the agreed terms. That in the circumstances, the respondent is justified to proceed with recovery by way of sale through public auction.
- 6.** I have considered the rival arguments in respect of the application dated 19.11.2025. The principles

underpinning the grant of temporary injunctions are now settled. The same are found in the celebrated case of **Giella vs Cassman Brown (1973) EA 358** where it was stated thus:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the 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.”

Also see **Nguruman Limited V Jan Bonde Nielsen & 2 Ors [2014] eKLR.**

7. I find that the applicant has mentioned actual figures for the amounts he has so far paid amounting to Ksh 90 704

355. It also contends that the demand made is for Ksh 76 209 212. The respondent has not rebutted these figures. Indeed, the respondent is mute on what the pending loan amount is, yet it contends that it is justified to proceed with the sale. I find that this is an appropriate case to grant injunctive orders. The court however does not have sufficient material to determine whether the proposed sale is illegal or not. That is an issue to be determined after the substantive hearing of the suit.

8. In conclusion the court partially allows the application dated 19.11.2025 in the following terms;

“1. That a temporary order of injunction is issued restraining the defendant/respondent and its servants and agents particularly Westminster Commercial Auctioneers Limited, from selling, dealing, interfering or disposing off all that parcel of land known as title number Laikipia/Nyahururu/8211-Laikipia

County pending the hearing and determination of the main suit.

- 2. That the Status quo as to the ownership of all that parcel of Land Title Number Laikipia/Nyahururu/8211-Laikipia County be maintained pending the hearing and determination of the main suit.**
- 3. The suit property shall not be sold until further orders are given by the Court.**
- 4. The costs of the application shall abide the outcome of the suit”.**

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 26TH DAY OF FEBRUARY 2026 THROUGH
MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Kabucho for plaintiff.

Ms. Swaka holding brief for Njenga for defendant.

Nancy Mwangi – Court Assistant

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