



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
HCCOMM NO. E002 OF 2026

NANCY KAGWIRIA NJEUPLAINTIFF/APPLICANT

VERSUS

**MEDICAL CREDIT FUND II COOPERATIEF U.A1ST
DEFENDANT/RESPONDENT**

STICTHING MCF KENYA LIMITED2ND DEFENDANT/RESPONDENT

**PETER M. GACHIE T/A REGENT AUCTIONEERS ..3RD
DEFENDANT/RESPONDENT**

DR. KENNEDY MURIMI WAWERU4TH DEFENDANT/RESPONDENT

MWEA COUNTY MEDICAL CENTRE LIMITED5TH DEFENDANT/RESPONDENT

RULING

[1] The Court has considered the application dated 21/2/2026 for injunction pending hearing and determination of the suit, the Replying Affidavit and the submissions made by Counsel for the parties yesterday.

[2] The principles for the grant of applications for interlocutory injunction set in ***Giella v. Casman Brown*** (1973) EA 358 that:

“(i) an applicant must show a prima facie case with a probability of success;

(ii) an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury;

(iii) when the court is in doubt, it will decide the application on the balance of convenience.”

[3] The Court also bears in mind, the guidance of the Supreme Court in the recent decision of ***Standard Chartered Financial Services Limited v Manchester***

Outfitters (Suiting Division) Limited Now Called King Woolen Mills Limited & 2 others [2025] KESC 68 (KLR) as to obligation to repay a loan, as follows:

“99. In conclusion, we stress that borrowing money, whether as a friendly loan or from a financial institution, creates a legal and moral obligation to repay, regardless of whether or not the money was secured. One cannot, in good conscience, in good faith, and in law, enjoy the benefit of borrowed money and later evade repayment, citing the lack of security.”

[4] The Court has also considered that being an equitable remedy the applicant must approach the court with clean hands and without delay. There is no explanation why the application was not filed until 21/2/2026, only five days before the scheduled sale of the suit property, when it is indicated that the verifying affidavit for the suit was sworn on 21/12/2025.

[5] The suit before the Court is as submitted by Counsel primarily based on want of spousal consent to charge property, as set out in the Complaint paras 7-16:

*“7. The Plaintiff avers that she is the wife of the 4th Defendant herein, who is the registered proprietor of all that property identified as **Mwea/Tebere/B/ 3820** (hereafter the "**Suit Property**").*

8. The Plaintiff avers that the said property, while registered in the name of the 4th Defendant, is a matrimonial property for reasons that the Plaintiff contributed in the purchase and development of the property.

*9. The Plaintiff avers that she has discovered that on or around **24/10/2022**, the 4th Defendant herein offered the property to the 1st Defendant herein as security for a facility advanced to 5th Defendant of **Kshs.108,390,000.00**.*

*10. The Plaintiff further avers that she has discovered that on or around **23/10/2024**, the 4th Defendant offered the property to the 1st Defendant herein for a further charge of **Kshs.82,791,947.00**.*

11. The Plaintiff states that the 4th Defendant failed, ignored and or declined to seek her consent in violation of Sections 12(1) of

the Matrimonial Property Act and Section 93 of the Land Registration Act.

12. For the said reasons, the Plaintiff avers that the Charge and further charge aforesaid are illegal, null and void.

*13. The Plaintiff aver that she has also discovered that the 1st Defendant is a foreign company which is not registered in accordance with the laws of Kenya. Accordingly, the Plaintiffs aver that the 1st Defendant is prohibited from carrying out business in Kenya pursuant to **Section 974** of the Companies' Act.*

14. The Plaintiff avers that charge and further charge over the matrimonial property is illegal, null and void.

*15. The Plaintiff states that notwithstanding the above illegalities, 3rd Defendant herein has advertised the suit property for sale on **26th February, 2026.***

16. The Plaintiff avers that the intended sale by the 1st, 2nd and 3rd Defendants is illegal, null and void for reasons that the 1st Defendant did not serve the 1st Plaintiff with the 40-day statutory notice as required under Section 96(3)(c) of the Land Act, 2012.”

[6] There was non-disclosure of the fact that there was a previous suit between the 4th Defendant, the spouse of the applicant herein, and the 5th Defendant company on the one hand and the 1-3 defendants on the other where the High Court at Nairobi had granted an injunction against the sale of the suit property upon terms which the plaintiffs had failed to comply prompting the readvertisement of the sale property in exercise of the chargee’s power of sale. The court order of the Milimani HCCOMM /E867/2025 filed on 22/12/2025 is in terms as follows:

*“REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT AIROBI COUNTY
COURT NAME: MILIMANI LAW COURTS
CASE NUMBER: HCCOMM/E867/2025
CITATION: DR. KENNEDY MURIMI WAWERU AND MWEA
COUNTY MEDICAL CENTER LIMITED*

VS MEDICAL CREDIT FUND II COOPERATIEF U.A AND
STICHTING MCF KENYA LIMITED AND 1

OTHERS

ORDERS(COURT DOCUMENT)

1. Upon consideration of the Chamber Summons application dated 22nd December 2025, filed under the vacation rules, I am satisfied that the matter warrants urgent attention. Accordingly, the application is allowed. The matter is certified as urgent and the Notice of Motion dated 22nd December 2025 is admitted for hearing during the Christmas vacation.

2. The application shall be served and responded to within 15 days of service. Thereafter parties shall exchange skeleton submissions limited to 7 pages within 15 days each beginning with the applicant.

3. Meanwhile, I allow prayer 2 and grant a temporary injunction in respect of the property known as Mwea/Tebere/B/ 3820, on condition that the applicant shall pay to the respondent the amount of Kshs. 50,000,000/= and in addition furnish a bank guarantee for Kshs. 50,000,000/= within 30 days.

In default of compliance the injunction shall automatically lapse and the respondents shall be at liberty to execute. The matter will be mentioned on 26th February 2026 for further directions.

GIVEN under my hand and the seal of this Honorable Court this 23rd December 2025.

Penal Notice: Take notice that any disobedience or non-observance of the order of the court served herewith will result in penal consequences to you and any other person(s) disobeying and not observing the same

SIGNED BY: HON. LADY JUSTICE DR. GITHIRU FREDA
MUGAMBI”

[7] As a spouse of the 4th respondent and a shareholder director of the 5th Defendant who were the Plaintiffs in the suit earlier filed in the High Court at Nairobi, the Plaintiff/applicant in this case must be taken to have known of the previous suit and

the orders made therein and the default of the Plaintiffs to comply with the orders of the Court.

- [8] Indeed, the plaintiff/applicant in this case is shown to have sworn respectively in 22/12/2025 and 21/12/2025 two verifying Affidavit for the two suits – the suit before the Nairobi High Court and the suit herein - before the same commissioner for oaths and drawn by the same advocate on record for the Plaintiff herein – the first as a director and the second as a spouse.
- [9] There is no reason why the Plaintiff did not set out her claim in the previous suit the facts of which she verified by her affidavit of 21/12/2025, or file this suit, if it was considered that the causes of action could not be merged, at the same time. The accusation by the 1-3 defendants that the Plaintiff and the 4th and 5th Defendants are gaming the court by filing multiple suit in a gamble for whichever succeeds is justified.
- [10] The loan facility KO1 dated 26/6/2022 indicates that the Plaintiff signed on the agreement as the first director of the borrower, the 5th defendant company, and her husband, the 4th defendant, signed as the second director and the suit property **Mwea/ Tabere/B/3820** registered in the name of the Plaintiff's husband is shown at p.40 of the Loan Agreement as the primary security for the loan. How can she now be heard to say in this suit that she was unaware of the borrowing and she did not give her spousal consent?
- [11] The court must find that the applicant has not approached the court with clean hands and that her claim to lack of knowledge of the loans herein and as to lack of consent to the charges does not raise a prima facie case. Indeed, on the evidence before the Court by attachments to the Replying Affidavit, the applicant is shown to have given her consent to the borrowing by the 5th defendant and the charging of the suit property on two occasions on 4/10/2022 and 28/8/2024 both commissioned before Commissioners for Oaths Ms. Vivian Ouko and Mr. Paul Kiranga, Exhibits KO14 and KO15 respectively.
- [12] The Issue raised at paragraph 10 of the Plaint herein as to the status of the 1st respondent in terms of section 974 of the Companies Act is a key issue as pleaded in paragraph 12 of the Plaint in the Nairobi High Court suit Milimani HCCOMM/867/2025 as follows:

“12. The Plaintiffs aver that they have discovered that the 1st Defendant is a foreign company which is not registered in accordance with the laws of Kenya. Accordingly, the Plaintiffs aver that the 1st Defendant is prohibited from carrying out business in Kenya pursuant to Section 974 of the Companies' Act.”

It is sub judice and this court cannot properly proceed to deal with it in terms of section 6 of the Civil Procedure Act.

[13] The suit before this court being on the cause of action of spousal consent will be dealt with as such, and the Court will leave the question of the status of registration of the lender 1st defendant to the suit at Milimani High Court Nairobi.

[14] The defendants have demonstrated delivery of statutory notices to the address of the plaintiff given in the charge documents.

[15] The Court does not accept the contention that notice given to the Plaintiff as director of the borrower company does not excuse service of notice to her as spouse under section 96 (3) (c) of the Land Act, where she is the same person and the same address is given for the same person who happens to be both the spouse of the chargor and aco- director of the borrower company. In addition, it is clear that the case presented in the Plaint before the Court is based on lack of spousal consent, which if truly not given, the question of service of notice to her would not arise.

[16] From the evidence, it would appear - and the burden of proof is on the plaintiff/applicant who asserts that she was unaware of the loan and she did not give her consent for it - that spousal consent was given and, therefore, no *prima facie* case is established for the cause of action in this suit.

[17] As regards the consideration as to damages being adequate remedy, the Plaintiff has quantified that she spent **10,000,000/-** on the suit land and this quantifiable claim may be remedied by an award of damages. The same may be said of any finding that the sale was conducted at an under value, which ground of attack was not pleaded in the Plaint but taken only in the application. As observed by the Court in *Standard Chartered Bank of Kenya Limited & another v Kaburu & another (Civil Appeal E073 of 2022) [2022] KEHC 13546 (KLR) (Commercial and Tax) (7 October 2022) (Judgment)*:

“Once the suit property was charged, the parties agreed that it could be sold upon their default as it was now a commodity for sale available for purchase by the public upon default (see Joseph Gitahi Gachau and another v Pioneer Holdings (A) Limited and 2 others [2009] eKLR).”

[18] Balance of convenience is clearly on allowing the sale to proceed, the Plaintiff having approached the Court with unclean hands and her claim being remediable by an award of damages. The court considers also that ordinarily protracted delays in the exercise of a chargee’s power of sale may result in the escalating loan amount to become unrecoverable by sale of the property.

ORDERS

[19] Accordingly, for the reasons set out above, the Court finds that the Plaintiff’s application dated 21/2/2026 has no merit and it is declined.

[20] Costs in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF FEBRUARY 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mugo for the Applicant.

Mr. Opole for the 1-3 Respondents.

N/A for the Respondents.