



REPUBLIC OF KENYA



**KENYA LAW**  
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**Magan Gababa Company Limited v African Banking Corporation Ltd & another (Civil Case E250 of 2025) [2026] KEHC 1183 (KLR) (Commercial and Tax) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1183 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E250 OF 2025  
F GIKONYO, J  
JANUARY 29, 2026**

**BETWEEN**

**MAGAN GABABA COMPANY LIMITED ..... PLAINTIFF**

**AND**

**AFRICAN BANKING CORPORATION LTD ..... 1<sup>ST</sup> DEFENDANT**

**IGARE AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Temporary injunction**

1. The significant order sought in the plaintiff/ applicant's notice of motion dated 2.4.2025 expressed to be brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules, is among others; a temporary injunction to restrain the 1<sup>st</sup> respondent or its agent or auctioneer from selling Land Reference no. 209/18512 (IR No. 110319) pending the hearing and determination of this suit or further orders of the court.
2. The application is supported by the affidavit sworn by the applicant's director, Abdow Mohamed Liban on 2.4.2025 and written submissions dated 29.7.2025.
3. The application is opposed by the defendants/ respondents through a replying affidavit sworn by the 1<sup>st</sup> respondent bank's legal manager, Kajuju Marete on 5.5.2025 and written submissions dated 11.7.2025.

**Applicant's case**

4. According to the applicant, there are pending suits where the 1<sup>st</sup> respondent/ bank is accused of an illegal and fraudulent sale of the subject property to it, being, Civil Appeal No. 282 of 2020, Gulf



African Bank Limited v Mohamed Adan Bare & 3 Others, HCCC 49 of 2020 Mohamed Adan Bare v Aima Enterprises Limited & 3 Others, ELC No. 1154 of 2016 Gulf African Bank Limited v Mohamed Adan Bare & 3 Others, Civil Appeal Application No. E079 of 2025, Mohamed Adan Bare v Aima Enterprises Limited & 3 others.

5. The applicant stated that he received a status quo order issued in ELC No. 1154 of 2016 restraining him from developing or using the subject property. The applicant therefore sought suspension of the loan which it claims the bank impliedly accepted. That, however, on 28.3.2025, the auctioneer went to the property and served a notice of sale by public auction on the bank's instructions.
6. The applicant faulted the respondents for failure to conduct the auction transparently. It relied on Palmy Company Ltd v Consolidated Bank of Kenya Ltd [2014] eKLR to the effect that any deviation from prescribed procedures-including secretive auctions or failure to advertise- renders the sale a nullity.
7. The applicant contended that; a) it has not been served with the statutory notices before the property was advertised for sale by public auction by the 2<sup>nd</sup> defendant/ auctioneer as required in law (Two Calves Investments Ltd & Another v KCB Bank Kenya Ltd [2022] KEHC 16481 and Stephen Boro Gititha v Nicholas Ruthiru Gatoto [2017] eKLR); b) it has not been served with any valuation or reserve price of the property (Mutunga v Housing Finance Co. of Kenya Ltd [2011] eKLR) and its attempts to get the information from the bank or the auctioneer have been futile.

## **Response**

8. The bank disputed the applicant's claim that it agreed to suspend the loan due to the pending litigation. It asserted that there is no evidence of the bank consenting to the variation of the terms of the letter of offer or suspending the loan repayment terms. It relied on Kugunya v Makari [2024] KEELC 7555 (KLR) to argue that a written contract can only be varied in writing, not orally.
9. The bank asserted that there is no existing case or order issued by a court of competent jurisdiction to impugn the sale of the subject property to the plaintiff. It highlighted that no suit had been filed to challenge the sale at the time the subject property was sold to the applicant on 7.9.2016.
10. The bank contended that ELC 1154 of 2016 was not in relation to the subject property and that the court dismissed the application filed in the matter and noted that no proper amended plaint had been filed to challenge the sale of the subject property. It further pointed out that ELC 1154 of 2016 was transferred from the ELC to this court and designated as HCCC 049 of 2020 then struck out for want of jurisdiction on 27.1.2025. Thereafter, the plaintiff in that case sought an injunction pending appeal in Civil Appeal Application No. E079 of 2025 but that application does not mention the subject property.
11. The bank asserted that all the requisite statutory notices were issued to the applicant. It relied on Parrallel Media Ltd & another v Family Bank Ltd & another [2023] eKLR to the effect that it is the applicant's burden to prove that it did not receive notices sent through registered post. It also asserted that the property has been valued in preparation for the auction.
12. The bank relied on Giella v Cassman Brown & Co. Ltd [1973] EA 358 and Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR to argue that the applicant has failed to establish a prima facie case with a probability of success to warrant an injunction. It relied on Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR to submit that if prima facie case is not established, then irreparable injury and balance of convenience need no consideration.



13. That notwithstanding, the bank also relied on *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR to argue that the applicant has not shown that it will suffer harm that cannot be compensated by damages if the injunctive orders are not granted. On the balance of convenience, the bank, relying on *Maithya v Housing Finance of Kenya Ltd & another* [2003] EA, emphasized the need for timely recovery as the outstanding sum of Kshs. 75,160,650/- outstrips the value of the collateral held.
14. The bank further relied on *New Age Developers & Construction Co. Ltd v Jamii Bora Bank Limited* [2017] KEELC 1706 (KLR) for the assertion that when part of amount claimed is admitted or proved to be due, a charge cannot be restrained by an injunction.
15. The bank urged the court to dismiss the application with costs.

## **Analysis and Determination**

### **Threshold and issue**

16. Is a temporary injunction sought herein merited?
17. Ordinarily, a temporary injunction would not be granted unless the applicant has established a prima facie case with a probability of success, that irreparable harm that cannot be compensated by way of damages will occur if the injunction is not granted and in case of doubt, that the balance of convenience tilts in favour of granting the injunction. *Giella v Cassman Brown* [supra]
18. Has the applicant met this threshold?
19. A prima facie case is one which on evidence presented, there exists a right which has apparently been infringed by the opposite party. *Mrao Ltd v First American Bank of Kenya Ltd* [supra]
20. But, "...in considering whether or not a prima facie case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely." *Nguruman Limited v Jan Bonde Nielsen & 2 Others* the Court of Appeal
21. The applicant's gravamen is that the bank had agreed to suspend the loan due to pending litigation challenging the sale of the subject property to the applicant.
22. The applicant also challenges the bank's decision to proceed with an auction of sale of the subject property without transparency and following the requisite procedures. It claims that the bank failed to issue statutory notices for sale, to disclose the valuation status and secretly issuing the instructions for selling.
23. On the other hand, the bank asserted that the debt is admitted by the applicant; that there are no pending suits over the subject property and no evidence that it agreed to suspend the loan; that the statutory notices were issued and valuation done before the auction.
24. The applicant acknowledged that it purchased the subject property from the 1<sup>st</sup> defendant on 7.9.2016 for Kshs. 50,000,000/-. It also acknowledged that the bank financed the balance of Kshs. 38,000,000/- and that the facility was secured by a charge over the property in the bank's favour.
25. Within these circumstances, it is difficult to make a finding on affidavit evidence provided, that the applicant has established a prima facie case with a probability of success and that it will suffer irreparable harm if the orders sought are not granted. The issues in this matter require full evaluation upon evidence tested through cross-examination.
26. Therefore, the balance of convenience is against granting the injunction.



**Disposal**

27. Accordingly, the application dated 2.4.2025 is dismissed. in light of the circumstances of this case, each party shall bear own costs of the application.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 29<sup>TH</sup> DAY OF JANUARY, 2026**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Mariet for Gikunda for Plaintiff

No appearance by defendant

CA- Kinyua

