



REPUBLIC OF KENYA



KENYA LAW
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Njogu t/a Davemart Supermarket Limited v Amica Sacco Limited (Tribunal Case E256 of 2025) [2026] KECOPT 93 (KLR) (20 February 2026) (Ruling)

Neutral citation: [2026] KECOPT 93 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE E256 OF 2025
J MWATSAMA, AG CHAIR, B SAWE, F LOTUIYA,
P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS
FEBRUARY 20, 2026**

BETWEEN

DAVID MWAURA NJOGU T/A DAVEMART SUPERMARKET LIMITED CLAIMANT

AND

AMICA SACCO LIMITED RESPONDENT

RULING

1. The Notice of Motion Application dated 28th March, 2025 is brought under Order 42 of the Civil Procedure Rules seeking among others:
 1. Spent
 2. The Respondents, their agents, servants and/or anybody claiming through or on under them be restrained by way of interim injunction from proclaiming, attaching and/or selling the Claimant properties on the basis of the disputed credit facility issued to the Claimant by the Respondent pending the hearing of the Application inter -partes or until further orders of the Tribunal whichever is the latest
 3. An interim injunction do issue restraining the 1st Respondent Amica Sacco Society Ltd from demanding from the Claimant a sum of Kshs. 90,000,000/= or attach and sell the Claimant property as the sum is contested and cannot form the basis of an auction pending the hearing of the application.
 4. The written demand letter threatening to attach the Claimant's properties be stayed pending the hearing of the application inter-partes .



2. The Application was based on the Affidavit of David Mwaura Njogu on the grounds:
 - a. That the impugned credit facility allegedly granted to the Claimant is unconscionable, unlawful and illegal.
 - b. That the interest is not tenable in law as it goes against the banking practices the world over.
 - c. That when an issue of interest and a credit facility is contested, the Respondent will be going against the rules to proclaim the Claimant's property.
 - d. That the amount of interest charged by the Respondent on the credit facility exceeded the principal sum which scenario is not tenable in law.
 - e. That the Respondent is guilty of the tort of unjust enrichment and an order of injunction should issue restraining the Respondent from realizing the security on the basis of unconscionable sum.
3. This Tribunal gave directions for the Application to be served, with the Respondent filing their Reply Affidavit dated 16th May, 2025 stating among others:
 - i. That on 11th January, 2022 the Claimant applied for a loan of KSHS. 90,000,000/= which loan was approved, processed and disbursed to the Respondent
 - ii. That the security for the loan was Investa Deposit and Debenture over all assets of Kwa Dave trading Ltd and Davemart Supermarket Ltd
 - iii. That the Claimant who is a Director of the Company and one Winnie Wambui Kamau also guaranteed the said loans
 - iv. That the Claimant's loan has been in arrears and the Claimant has ignored the Respondent plea to honor his loan obligation
 - v. That the Respondent has issued several demand letters to the claimant requesting the Claimant to repay his loan arrears, but the Claimant has been uncooperative.
 - vi. That the Respondent issued the final demand notice stating its intention to commence proceedings for loan recovery via notice dated 24th March 2025.
 - vii. That the Claimant has not come to the Honorable Court with clean hands since he did not disclose that he was indeed indebted to the Respondent
 - viii. That the allegations by the Claimant that he renovated the building in the Respondent's premises on an understanding that the amount used will be offset against what he owed the Respondent are all false, unfounded and mere speculations without proof.
 - ix. That the Claimant is deliberately misleading the Honorable Court that he did not take any loan from the respondent and that there was no security issued for the alleged loan, a statement that the Respondent disapproves and has attached all the necessary documents showing that indeed the Claimant did apply and got the loan of Kshs. 90,000.000/= from the Respondent.
 - x. That the suit is an attempt to frustrate the loan recovery.
4. The Claimant filed his submissions dated 1st July, 2025 stating among others:



- a. That he expended a whopping sum of over Kshs. 50,000,000/= in refurbishing a building in the Respondent's premises in Maragua on the understanding that they will offset the amount with the rent payable
 - b. That the Respondent did not request for security as required by banking practices
 - c. That the Respondent intends to reap where they did not sow by demanding the sum of Kshs 90,000,000/= which demand is fraudulent and scandalous
 - d. That the interest charged by the Respondent is unconscionable and untenable in law
5. The Respondents on their end filed their Written Submissions dated 30th July, 2025 stating among others:
- i. That the Claimant has not proved that he has a prima facie case against the Respondent
 - ii. That the Respondent has every legal right to institute loan recovery against the Claimant for loan default
 - iii. That the Respondent is suffering the greater damage as some of its members are not able to be granted loan as a result of the Claimant default.
 - iv. That the Respondent has not issued any proclamation on the Claimant's properties or put up any advertisement for sale. That the Claimant is seeking for interim injunction orders against a non-existent action.

Has the Claimant satisfied the requirements for grant of a temporary injunction or interlocutory injunction?

6. The factors Courts and Tribunals consider or analyse as a guide to granting or denying the prayer for interim injunction were set out in the landmark case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, requiring the party applying for interim injunction orders to:
- a. Show that they have established a prima facie case, which is strong enough to proceed to trial.
 - b. Demonstrate that they are likely to suffer irreparable harm, which is significant and non-monetary in the sense that the Applicant cannot be compensated a monetary award if the injunction is not granted.
 - c. A demonstration of a balance of convenience in the sense that if there is a doubt in regard to the first two conditions, the court will consider which party would suffer more from either granting or denying the injunction.
7. The main purpose of a temporary or interlocutory injunction is to preserve the status quo until a final decision is made. According to the Claimant, he spent in excess of Kshs. 50,000,000/= to renovate some premises that belong to the Respondent which money was to be recovered from rent, and denies totally to taking any loan from the Respondent.
8. The Respondents on their end have disputed the facts as presented by the Claimant and have attached the loan transaction details including the securities that were used to guarantee the loan. According to the Respondent, the Claimant has not demonstrated or presented any documentation on the claims he is making, and as such has not satisfied the requirement of presenting a prima facie case with the probability of success.



9. We have taken note of three things. First, the two claims are far apart and we are struggling to find a connecting point between the renovation of a building at a cost of Kshs. 50,000,000/= and a loan transaction of Kshs. 90,000,000/= that was disbursed - the two claims can be canvassed independent of each other, or taken to a mediator to help the two parties reconcile their books. Its possible that both stories are true, we are just struggling to find the connection.
10. Second, this Tribunal is being invited to stop processes that are either not within its jurisdiction (like staying a demand letter or restraining a party from demanding payment) or to prematurely stop the proclamation of what has not been proclaimed or advertised for sale - we can only stop a sale if advertisement has been done, and we are persuaded that the same is not in order or the proper process of proclaiming and advertising has not been followed.
11. Third, in as much as the Claimant has alluded to spending a whopping Kshs. 50,000,000 on a premise that belongs to the Respondent, he has not provided any evidence of that spending, or the terms upon which they agreed with the Respondent. As such, we can't grant injunctive orders or come to the conclusion that a prima facie case has been presented based on hearsay.
12. What constitutes a prima facie case was explicitly explained in the case of Mrao Ltd v First American Bank of Kenya & 2 Others, [2003]KLR 125, where the Court of Appeal held that:

"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 been infringed by the opposite party to call for an explanation or rebuttal from the latter"
13. Having found that the Claimant has failed to establish a prima facie case to warrant grant of temporary injunction, this Tribunal finds that there is no need to consider and address that other two conditions required, as the Court of Appeal in Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86, made it clear that:

The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is sequential so that the second condition can only be addressed if the first one is satisfied."
14. Based on how the two cases have been presented, we are not persuaded that we need to grant temporary injunctive orders at this stage.

Final Orders

15. The Notice of Motion Application dated 28th March, 2025 is found to have no merit and is dismissed with costs.

RULING DATED AND DELIVERED VIRTUALLY AT NAIVASHA THIS 20TH DAY OF FEBRUARY, 2026.

HON. J. MWATSAMA - AG. CHAIRPERSON SIGNED 20.2.2026

HON. BEATRICE SAWE - MEMBER SIGNED 20.2.2026

HON. FRIDAH LOTUIYA - MEMBER SIGNED 20.2.2026

HON. PHILIP GICHUKI - MEMBER SIGNED 20.2..2026

HON. MICHAEL CHESIKAW - MEMBER SIGNED 20.2.2026

HON. P. AOL - MEMBER SIGNED 20.2.2026



Tribunal Clerk Mutai

No appearance by parties.

Ruling delivered in absence of the parties

HON. J. MWATSAMA - AG. CHAIRPERSON SIGNED 20.2.2026

