



**Chase Bank Kenya Limited (in Liquidation) v Equity Bank Kenya Limited;
Riverside Mews Limited (Interested Party) (Civil Appeal (Application)
E1075 of 2025) [2026] KECA 494 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 494 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E1075 OF 2025
DK MUSINGA, M NGUGI & GV ODUNGA, JJA
MARCH 13, 2026**

BETWEEN

CHASE BANK KENYA LIMITED (IN LIQUIDATION) APPLICANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

AND

RIVERSIDE MEWS LIMITED INTERESTED PARTY

*(Being an application for an injunction pending the hearing and determination
of an appeal from the Ruling of the High Court at Nairobi (Dr. F. Mugambi,
J.) delivered on 28th November 2025 in HCCOM No. E515 of 2025)*

RULING

1. Before this Court is an application dated 15th December 2025 brought under the provisions of section 1A, 3A and 3B of the [Appellate Jurisdiction Act](#) as well as rule 5(2)(b) of the Rules of this Court. The main order sought in the application, pending hearing and determination of the applicant's intended appeal against the Ruling delivered by the High Court at Nairobi (Dr. F. Mugambi, J.) on 28th November 2025 in HCCOM No. E515 of 2025, is an injunction to restrain the respondent from advertising for sale, disposing of, alienating, transferring, charging or otherwise interfering in any manner howsoever with all that property known as L.R. No. 4275/13 (I.R. 74510)-the Riverside Office Block.
2. A brief background is necessary in order to put this application in context. Chase Bank Kenya Limited (In Liquidation) (the applicant), was placed under receivership by the Central Bank of Kenya on 7th April 2016 after it was unable to meet its financial obligations. Subsequently, by Gazette Notice No.



- 365 dated 16th April 2021, the Kenya Deposit Insurance Corporation (KDIC) was appointed as its liquidator.
3. In the course of executing its statutory mandate, KDIC commissioned a forensic audit of the bank's general ledger which allegedly revealed that approximately KES 7.5 billion of depositors' funds had been diverted by former directors and senior management to acquire assets through various special purpose vehicles (SPVs), including Riverside Mews Limited, the interested party herein. One such asset is L.R. No. 4275/13 (I.R. 74510), known as the Riverside Office Block (the suit property), said to be registered in the name of the interested party.
 4. It is contended that the directors of the applicant acknowledged, through a Declaration of Trust dated 15th April 2016, that the SPVs and their assets were held in trust for and on behalf of the applicant. KDIC demanded that they facilitate the transfer of the companies and their assets to the applicant, and when the directors allegedly failed to transfer the SPVs and their assets back to the applicant, KDIC instituted HCCC No. 159 of 2017- Chase Bank v. Zafrullah Khan & Others, seeking, among other reliefs, declarations that the assets held by the SPVs, including the suit property, beneficially belong to the applicant, and enforcement of the Declaration of Trust. Pending determination of that suit, the High Court issued a Mareva injunction on 13th April 2017 restraining the directors of the SPVs from dealing with the companies or their assets.
 5. In the meantime, it emerged that Equity Bank Kenya Limited, the respondent, had advanced a USD 9,500,000.00 loan facility to the interested party, secured by a charge and further charge over the suit property, together with a deed of assignment of the property's rental income.
 6. KDIC, in preserving the assets of the applicant, continued managing the property and applying all the rental income towards servicing the loan facility. Following a consent order recorded on 22nd January 2020 permitting negotiations on lease extensions and restructuring of the facility, the parties executed a letter of variation dated 7th October 2021 restructuring repayment terms.
 7. However, sometimes in 2024, the respondent allegedly converted the loan facility from United States Dollars to Kenya Shillings at an exchange rate of KES 145.50 to the dollar, and increased the interest rate from 8 % per annum to 20.98% per annum without notice to KDIC. As a result, the outstanding balance and instalments increased significantly. On 23rd June 2025, the respondent issued a redemption notice, with the intention of selling the suit property upon expiry of the statutory period.
 8. This issuance of the redemption notice prompted the applicant to move the High Court vide an application dated 4th August 2025 filed in HCCOM No. E515 of 2025 seeking a permanent injunction to restrain the respondent from selling or otherwise disposing of the suit property pending determination of the main suit.
 9. In support of the application, the applicant contended that the suit property forms part of the subject matter in HCCC No. 159 of 2017, and contended that the respondent had unlawfully and unilaterally restructured the loan facility by converting it from United States Dollars to Kenya Shillings at an exchange rate of 145 to the dollar, thereby exposing it to irreparable harm if the sale were to proceed.
 10. The respondent opposed the application, maintaining that the restructuring was not unilateral, and that the interested party had been notified vide a letter dated 8th March 2024 of the currency volatility concerns. It further contended that the applicant was neither the registered proprietor nor the chargor of the suit property, and that the suit property was not among those listed in the Declaration of Trust relied upon by the applicant.



11. In the ruling giving rise to this application, the trial court held that the respondent had advanced loan facilities to the interested party which were secured by a charge and further charge over the suit property, and that the interested party was the borrower and registered chargor. It further held that the Declaration of Trust relied upon by the applicant did not expressly include the suit property and that, in any event, the respondent's registered charge constituted a superior proprietary interest over the suit property.
12. On the alleged unilateral variation of the facility, the trial court held that the letter of 8th March 2024 by the respondent to the interested party explained the variation as a response to foreign exchange volatility, and that the Letter of Offer expressly allowed the Bank to vary the terms. It concluded that the variation was undertaken pursuant to contractual provisions and could not be termed unlawful or oppressive.
13. Regarding the subsisting Mareva injunction, the trial court held that such an order does not override or extinguish the proprietary rights of a secured creditor and cannot restrain the respondent from exercising its statutory power of sale under a duly registered charge.
14. The trial court ultimately found that the applicant had failed to establish the principles in *Giella v. Cassman Brown & Co Ltd*, [1973] EA 358. The application was therefore dismissed with costs.
15. The applicant, being aggrieved and dissatisfied with the entire ruling, has lodged an appeal from the said decision.
16. Turning to the grounds in support of this application, the applicant asserts on the face of the motion and in the affidavit in support sworn by John Masega Ombasa, the Assistant Director of Bank Resolution at KDIC, that its appeal raises weighty, bona fide, and arguable issues with a high probability of success. In the Memorandum of Appeal dated 11th December 2025, the applicant contends that the learned judge erred in law and in fact by, inter alia: failing to appreciate that the applicant's claimed beneficial interest in the interested party and the suit property is the subject of ongoing recovery proceedings in HCCC No. 159 of 2017; failing to find that statutory notices under sections 90 and 96 of the [Land Act](#) were not served upon KDIC despite its court-sanctioned role in managing and restructuring the facility; failing to hold that the respondent was estopped from denying KDIC's authority after recognizing and contracting with it; upholding the respondent's unilateral conversion of the facility from USD to KES and repricing of interest from 8% to 20.98 % per annum, which allegedly doubled the instalments and amounted to an unlawful clog on the equity of redemption; in failing to consider the requirement for statutory approval under section 44 of the [Banking Act](#); and in holding that the respondent's rights as chargee override KDIC's statutory mandate and subsisting freezing orders, thereby risking prejudice to the liquidation estate and rendering the pending suit nugatory.
17. On the nugatory aspect, the applicant contends that unless the order sought is granted, the respondent will proceed to exercise its statutory power of sale and dispose of the suit property, thereby rendering the appeal nugatory as the property would be irretrievably lost. The applicant further contends that although the trial court granted a limited 45-day injunction to enable it approach this Court for appropriate relief, that protection is due to lapse on 12th January 2026 (now past), and the respondent has already issued statutory notices, demonstrating a clear intention to realize the security. The applicant therefore maintains that the risk of sale of the suit property upon expiry of that window is real and imminent, not speculative.
18. The applicant further asserts that, as a bank under liquidation, preservation of the suit property is critical to safeguarding depositors' and creditors' interests, and that its disposal would occasion



- substantial and irreparable prejudice to the liquidation estate and undermine public interest underlying the liquidation process. In this regard, therefore, the applicant posits that even if its appeal were to succeed, such success would be merely academic or pyrrhic if the property has already been sold.
19. The applicant therefore urges this Court to grant the orders sought in order to avoid this application and the appeal being rendered otiose.
 20. The respondent opposes the application vide a replying affidavit sworn by Kariuki King'ori, its Manager, Legal Services. He deposes that the respondent lawfully advanced credit facilities to the interested party secured by a charge and further charge over the suit property together with a deed of assignment of rental income and guarantees. He further outlines the history of the facilities, including the initial equity release facility of USD 5,500,000 in 2012 and the subsequent restructuring of the facility in 2014 to USD 9,500,000, and avers that the securities were duly perfected and registered in favour of the respondent.
 21. He avers that the interested party defaulted, prompting issuance of statutory notices under the Land Act, and that despite proposals by KDIC to redeem the facility, the proposed settlement terms were not honoured.
 22. The deponent further contends that the applicant is neither the registered proprietor nor the chargor of the suit property and has no proprietary interest therein capable of defeating the respondent's statutory power of sale.
 23. The respondent disputes the applicant's reliance on the Declarations of Trust and asserts that the charged property does not appear in the 15th April 2016 Declaration of Trust, and that, in any event, the charge in favour of the respondent predates the trust instruments.
 24. It is also averred that the letter of variation dated 30th September 2021 did not alter the respondent's contractual discretion to convert the facility currency, and that the conversion from USD to KES in March 2024 was undertaken pursuant to clause 10 of the letter of offer due to exchange rate volatility, and with notice issued to the borrower.
 25. It is further deposed that the respondent complied with all statutory requirements, conducted a forced sale valuation, and issued the requisite redemption notice through licensed auctioneers, and that as at 20th August 2025, the outstanding debt was stated to be KES 1,339,891,124.87, which continues to accrue interest.
 26. From the foregoing, the respondent avers that the applicant has not demonstrated that the intended appeal is arguable. In addition, it is deponed that the applicant lacks locus standi to restrain exercise of statutory power of sale as it is not the owner of the charged property; that the interested party, who is the registered owner of the suit property, has not challenged the steps taken by the respondent to exercise its statutory power of sale; that the applicant was not a party to the credit facility agreements and the security agreements between the interested party and the respondent; and that the applicant cannot seek an injunction to stop the respondent from auctioning another person's property.
 27. On the nugatory aspect, it is averred that the applicant's claim against the interested party is a liquidated claim. As such, there can be no suggestion that if an injunction is not issued the applicant will suffer irreparable harm that cannot be compensated by an award of damages. It is therefore deponed that the intended appeal will not be rendered nugatory as damages are an appropriate remedy if the appellant is successful in the intended appeal.
 28. Lastly, the respondent depones that granting the injunction would unjustly relieve the interested party of its obligation to repay a substantial debt and would severely prejudice the respondent.



29. At the hearing of this application, Senior Counsel Mr. George Oraro appeared together with Ms. Lubano, Ms. Mwariri and Ms. Ogutu for the applicant. For the respondent, senior counsel Mr. Kiragu Kimani was present alongside Mr. Ondieki. Counsel made brief oral highlights of their respective client's written submissions.
30. Highlighting the applicant's written submissions dated 8th January 2026, Mr. Oraro, SC, reiterated that the intended appeal raises serious questions as to whether the learned judge erred in holding that the applicant had no recognizable interest in the suit property despite the existence of a declaration of trust and the respondent's prior dealings with the receiver and liquidator, including receipt of rent through KDIC. It was contended that trust interests are overriding interests under section 28 of the [Land Registration Act](#), and that the trial court misdirected itself by focusing on priority of interests rather than on whether proper statutory notices were served, and whether the unilateral conversion of the facility and increase of interest were lawful. He maintained that issues surrounding service of notices, alleged non-compliance with section 44 of the [Banking Act](#), and the effect of the Mareva order were bona fide and deserving of consideration on appeal.
31. On the nugatory aspect, it was contended that if the property were sold before the appeal is heard, the appeal would be rendered academic because the asset would be irretrievably lost and any realization would likely be at an undervalue, thereby prejudicing depositors and creditors in the liquidation. Senior Counsel posited that damages would not be an adequate remedy since the applicant seeks preservation of the asset to secure its full market value rather than post-sale compensation based on a forced sale price.
32. On his part, Mr. Kiragu Kimani, SC, and learned counsel Mr. Ondieki, highlighting the respondent's written submissions, contended that the appeal is not arguable because the applicant is neither the registered owner nor the chargor of the property and lacks privity of contract with the respondent. It was submitted that the interested party, as borrower and registered proprietor, has not challenged the exercise of the statutory power of sale, and that the charged property was not included in the declaration of trust. The respondent further maintained that the conversion of the facility and variation of interest were undertaken in accordance with the contractual terms agreed with the borrower, and that there was no legal basis to restrain realization of a valid security.
33. As regards the nugatory aspect, it was contended that the appeal would not be rendered nugatory even if the sale proceeded because the applicant's claim against the interested party is essentially monetary and compensable in damages. It was emphasized that the respondent is a substantial financial institution, capable of satisfying any decree, and that, should the applicant ultimately succeed, it could recover the purchase price and any proven shortfall. The respondent further submitted that it would be more prejudicial to restrain realization of a debt exceeding KES 1.3 billion, which remains outstanding and continues to accrue interest, and that public interest favours allowing the secured creditor to exercise its statutory rights.
34. We have considered the application, the rival affidavits and submissions, as well as the applicable law. It is trite law that in an application of this nature, an applicant must satisfy this Court that the appeal or the intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR.
35. On arguability, we have considered the Memorandum of Appeal dated 11th December 2025, and without making any definitive pronouncement on the merits of the appeal, we are satisfied that the applicant has disclosed at least one bona fide arguable issue warranting consideration by this Court. It is well settled that an arguable appeal is not one that must ultimately succeed, but one that merits



judicial interrogation on appeal. On this basis, the applicant has satisfied the first limb of the test under rule 5(2)(b).

36. Turning to the nugatory aspect, this Court stated in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others* (supra) that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible; or if it is not reversible, whether damages will reasonably compensate the party aggrieved.
37. Indeed, there are competing arguments on whether the appeal will be rendered nugatory or not in the absence of the orders sought. The applicant contends that the suit property forms part of the estate under liquidation, and that its disposal would irreversibly remove the asset from the pool available to depositors and creditors. It maintains that once sold in exercise of the statutory power of sale, particularly at a forced sale value, the property would pass to third parties and any success on appeal would be largely academic. The respondent takes a different view. It maintains that the dispute is, in substance, financial and that any prejudice suffered by the applicant is quantifiable and compensable in damages. It emphasizes that it is a well-established financial institution capable of meeting any decree that may ultimately be issued. The respondent further contends that the applicant has no registered or proprietary interest in the suit property, and that the borrower and chargor (the interested party) has not, itself, moved to restrain the realization process. On that footing, it asserts that the appeal would not be rendered nugatory even if the sale were to proceed.
38. It is not in dispute that the respondent is a tier1 bank, and in the event that the appeal succeeds, it is capable of compensating the applicant for any loss that it may suffer as a result of sale of the suit property. The outstanding loan balance is in excess of Kshs 1. 3 billion, a colossal amount of money, and the loan continues to accrue interest. If realization of the security is delayed any further, the outstanding sum may outstrip the value of the suit property, which will not be in the interest of any of the parties. If, after hearing the appeal, it turns out that the respondent ought not, in the circumstances, to have exercised its statutory power of sale, the value of the suit property is capable of being determined and the respondent will no doubt make good that loss.
39. For these reasons, we are satisfied that the appeal, if successful, shall not be rendered nugatory. As the applicant has not satisfied both limbs under rule 5(2)(b) of this Court's Rules, we hereby dismiss this application with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH 2026.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed



DEPUTY REGISTRAR

