

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
COMMERCIAL CASE NO. E310 OF 2025

CHRISTOPHER MUSYOKI MUTUKU.....1ST
PLAINTIFF

KEZIAH WANJIKU KIMWAKI.....2ND
PLAINTIFF

VERSUS

STANBIC BANK KENYA LIMITED.....1ST
DEFENDANT

GARAM INVESTMENT AUCTIONEERS.....2ND
DEFENDANT

RULING

1. This ruling determines the Plaintiffs’ Notice of Motion dated 2nd May 2025 brought under Order 40 Rules 1(a), 2(1), 4(1) and 8, Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and Rule 15 of the Auctioneers Rules. The Applicants seek, principally, a temporary injunction restraining the Respondents from entering upon, advertising, offering for sale, transferring, alienating, trespassing upon or in any manner interfering with their quiet possession and title to Villa No. 47, Five Star Paradise, erected on L.R. No. 12825/196 (Original No.

- 12825/186), Kiambu County, pending the hearing and determination of the suit, together with costs.
2. The application is supported by the affidavit of Christopher Musyoki Mutuku. The Applicants depose that they are the registered proprietors of the suit property; that they obtained a home loan facility from the 1st Respondent; that they have made substantial repayments; and that the 1st Respondent has instructed the 2nd Respondent to sell the property in recovery of an alleged outstanding sum of Kshs. 39,427,186/=. They dispute service of the requisite statutory notices, particularly upon the 2nd Applicant as co-proprietor and chargor, challenge the computation of interest as contrary to the *in duplum* rule under Section 44A of the Banking Act, and assert that the intended sale is unlawful and calculated to defeat their equity of redemption.
 3. The Applicants further aver that the suit property constitutes their matrimonial home where they reside with their children and that, unless restrained, they stand to suffer irreparable loss.
 4. In opposition, the 1st Defendant filed replying affidavits and further affidavit sworn by Angela W. Njeri on 19th May 2025 and 3rd June 2025 respectively. She deposes that she is a Manager in the Non-Performing Loans Department and duly authorized to swear the affidavits. The 1st Defendant avers that it advanced to the 1st Plaintiff a home loan facility of Kshs. 36,000,000 secured by a legal charge over the suit property; that the Plaintiffs fell into persistent arrears; and

that the Bank consequently exercised its statutory power of sale pursuant to Sections 90 and 96 of the Land Act.

5. The 1st Defendant maintains that it issued and served the 90-day statutory notice under Section 90 of the Land Act, the 40-day redemption notice, and thereafter the 45-day notification of sale through the 2nd Defendant Auctioneers in compliance with Rule 15 of the Auctioneers Rules. It further avers that a forced sale valuation was undertaken in compliance with Section 97(2) of the Land Act prior to the intended public auction scheduled for 6th May 2025.
6. The Bank denies any illegality in the process and contends that the Plaintiffs have admitted default, that the statements of account accurately reflect the indebtedness, and that a dispute as to accounts or interest is not a basis for injunctive relief.
7. The application was canvassed by way of written submissions. The Plaintiffs filed submissions dated 22nd July 2025, while the Defendants filed submissions dated 23rd June 2025. I have carefully considered the pleadings, affidavits, annexures and rival submissions.

Analysis and determination

8. The principles governing the grant of interlocutory injunctions are settled. In **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, the Court held that an applicant must establish:

- i. a prima facie case with a probability of success;***
- ii. that he stands to suffer irreparable injury not compensable by an award of damages;***
and
- iii. if in doubt, that the balance of convenience tilts in his favour.***

9. These principles were restated by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR** where the Court emphasized that the three requirements are sequential and not conjunctive

10. The first issue is whether the Applicants have established a *prima facie* case with a probability of success. In **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, the Court of Appeal defined a *prima facie* case as one which, on the material presented, demonstrates an arguable right that has been infringed and which calls for rebuttal.

11. It is not disputed that the 1st Plaintiff obtained a loan facility secured by a legal charge over the suit property. It is equally not seriously contested that the Plaintiffs fell into arrears. The Applicants' principal complaints relate to alleged non-service of statutory notices and alleged irregular computation of interest.

12. On service, Sections 90 and 96 of the Land Act require issuance of the requisite statutory notices before the exercise of the power of sale. The 1st Defendant has

exhibited copies of the 90-day statutory notice, the redemption notice and the notification of sale, together with certificates of posting and affidavits of service. The Applicants have offered no cogent rebuttal beyond bare denial. A mere denial is insufficient where documentary evidence of service has been produced.

13. On the allegation of excessive interest and breach of the *in duplum* rule under Section 44A of the Banking Act, it is trite that a dispute as to accounts does not *per se* restrain a chargee from exercising its statutory power of sale. In ***Mrao Ltd*** (supra), the Court of Appeal held that the fact that the amount due is disputed is not a ground for granting an injunction.
14. It is trite law that disputes over accounts are matters for trial and not a basis for injunctive relief.
15. Further, Section 97(2) of the Land Act imposes a duty upon a chargee to obtain a forced sale valuation before sale. The 1st Defendant has exhibited a valuation report undertaken before the scheduled auction. No evidence has been placed before this Court to impugn the independence or integrity of that valuation.
16. In the premises, I am not persuaded that the Applicants have demonstrated a *prima facie* case with a probability of success.
17. On irreparable injury, the Applicants contend that the suit property is their matrimonial home. While this Court is

alive to the constitutional protection accorded to matrimonial property under Article 45 of the Constitution and the Matrimonial Property Act, it is settled law that once property is voluntarily charged as security, it becomes a commercial commodity. In **Maithya v Housing Finance Co. of Kenya Ltd [2003] eKLR**, the Court held that the sentimental value attached to a matrimonial home cannot override the chargee's statutory right of sale.

18. The Applicants have not demonstrated that damages would be an inadequate remedy. Should the sale ultimately be found unlawful, the law provides adequate recompense in damages under Section 99(4) of the Land Act.
19. Having found that the Applicants have failed to establish both a *prima facie* case and irreparable injury, it is unnecessary to consider the balance of convenience. In any event, where default is admitted, and the statutory process substantially complied with, the balance tilts in favour of allowing the chargee to realize its security.
20. In the result, the Notice of Motion dated 2nd May 2025 is devoid of merit and is hereby dismissed.
21. The interim orders earlier granted are hereby discharged.
22. The Plaintiffs/Applicants shall bear the costs of the application.
It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **12th** day of **March** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Gachuri for Plaintiffs

Ms. Kariuki for Defendants

Court Assistant: *Carlos*