



**Tsintseyi v National Bank of Kenya Limited (Civil Case
E004 of 2025) [2026] KEHC 3385 (KLR) (3 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL CASE E004 OF 2025
REA OUGO, J
MARCH 3, 2026**

BETWEEN

ELISHA SUMBA TSINTSEYI PLAINTIFF

AND

NATIONAL BANK OF KENYA LIMITED DEFENDANT

RULING

1. This ruling concerns the Motion dated 19/03/2025. It was filed under Sections 1A, 1B, 3, 3A, and 63 of the [Civil Procedure Act](#), as well as Order 40 Rules 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The applicant sought to restrain the respondent from selling Land Parcel No. E. Bukusu/S. Kanduyi/2629 (hereinafter referred to as the suit property), as well as from accessing Bank Account statements for Mortgage Account No. 01107094508300 and the current account operated by Eliemmy Agencies Limited, pending the hearing and determination of the suit.
3. The application was based on the grounds outlined in the face of the Motion, as well as the supporting affidavit of Elisha Sumba Tsintseyi sworn on 19/03/2025. He stated that he and his wife, Emmy Inziani Indeche, were the registered owners of the suit property. He also confirmed that his wife died on 27/07/2019.
4. That sometime in 2014, he and the deceased secured a Mortgage Construction Finance of Kshs. 20,000,000/- from the defendant, which was secured by a registered charge over the suit property. They also used Eliemmy Agencies Limited as their investment vehicle to guarantee the construction loan.
5. By 21/1/2016, Eliemmy Agencies Limited had repaid approximately Kshs. 2,000,000/-, and the remaining loan balance was Kshs. 19,334,019.77/-. However, due to the death of Emmy Inziani Indeche, the agency was unable to meet its loan obligations, and the loan fell into arrears.



6. That through a demand letter dated 8/7/2024, the defendant issued him with a three-month notice for Kshs. 43,725,642.32, consolidating the Mortgage loan of Kshs. 42,041,070.14, Business Account Loan of Kshs. 1,412,104.68, and Recoveries of Kshs. 272,467.50, of which he disputes the Business and Recoveries Loan.
7. That the consolidation of the construction loan with other debts not secured by the suit property prejudiced his right of redemption. That his attempts to sell the suit property by private treaty have been unsuccessful as the defendant insisted on settlement of all debts owed.
8. That the mortgage loan demanded by the defendant is unconscionable and excessive, thereby offending the duplum rule, and further, his requests for the statements for the construction loan from the defendant have been ignored.
9. Therefore, all notices issued concerning the charge over the suit property by the defendant are irregular, null, and void. The forced sale valuation report relied upon by the defendant drastically undervalued the suit property at Kshs. 42,000,000/-, while a report he commissioned valued it at Kshs. 62,000,000/-, a significant difference that must be disregarded.
10. The suit appears to have a strong chance of success due to the evident irregularities and illegalities outlined above. Furthermore, the suit property hosts businesses that provide livelihoods not only for the plaintiff and his family but also for other individuals. Therefore, the balance of convenience leans in favour of the plaintiff.
11. The application was opposed on two fronts. The defendant filed Grounds of Opposition dated 27/3/2025 in which it stated that the application was incompetent, scandalous, frivolous and an abuse of the court process as it was brought a day to the date of the sale of the suit property. That the motion does not satisfy the conditions precedent for grant of injunctive relief and further that the plaintiff admits being in default of the facility advanced and the mere fact that he disputes the amount advanced, in absence of any payments made towards the reduction of the debt is not a ground of seeking and being granted injunctive relief.
12. The defendant further relied on a replying affidavit sworn on the 2/5/2025 by one CRISPINUS WANYANGU. He deposed that the motion was devoid of any merits and ought to be dismissed with costs, as it had not satisfied the conditions for the grant of injunctions set out in *Giella v Cassman Brown*.
13. That through letters of offer dated 25/4/2014 and 2/5/2014, the plaintiff requested, and the defendant extended, a construction mortgage of Kshs. 20,000,000/-, repayable in 120 equal monthly installments of Kshs. 366,834/-. These facilities attracted a variable interest rate of 18.5% and were secured by a charge over the suit property.
14. That prior to the disbursement of the facilities, the plaintiff executed a joint and several guarantee of Kshs. 20,000,000/- ensuring repayment of the said loan.
15. Following the plaintiff's default, it issued and served the plaintiff with a 30-day demand notice along with the 90-day statutory notice, and a 40-day notice of intention to sell. The plaintiff neglected to redeem the property by paying the outstanding debt, which amounted to Kshs. 43,747,351.72.
16. That, due to the plaintiff's failure to comply with the notices, it instructed Keysian Auctioneers to serve the plaintiff with the 45-day redemption notice.



17. That the amount sought is not unconscionable, excessive, or in breach of the duplum rule, but that, as a result of the plaintiff's default, the defendant had every right to realize the security offered; and, conversely, the plaintiff was not entitled to the injunctive relief sought.
18. The parties agreed to file submissions to dispose of the motion. The plaintiff submitted that it had demonstrated a prima facie case as the planned sale was irregular, as the consolidation of the construction loan with other debts not secured by the suit property prejudiced his right of redemption. He also argued that the forced sale valuation reports grossly undervalued the suit property, contrary to the provisions of section 97 of the *Land Act*, which imposes a duty on the chargee to obtain the best reasonable price at the time of sale. Regarding irreparable harm, the plaintiff argued that he would suffer irreparable damage as the suit property hosts businesses that are a source of livelihood not only for the plaintiff and his family but also for other individuals, whereas the defendant would suffer no harm if the injunction was granted. Similarly, the balance of convenience tilts in favour of the plaintiff over the defendant.
19. Conversely, the defendant argued that the plaintiff did not present sufficient material before the court to establish a prima facie case or demonstrate that he faced irreparable loss that could not be compensated by monetary means. The defendant maintained that the only way for the plaintiff to circumvent the contract with himself was to repay the amounts advanced.

Analysis And Determination

20. I have examined the application, along with the responses and submissions filed concerning it. The principles for granting temporary injunctions were established in the case of *Giella –versus- Cassman Brown and Company Limited* (1973) E.A 385. These principles are that, first, an applicant must demonstrate a prima facie case with a likelihood of success. Second, an interlocutory injunction is generally not granted unless the applicant may otherwise suffer irreparable harm that cannot be adequately compensated by damages. Third, if the court is unsure, it will decide the application based on a balance of convenience.
21. A prima facie case was defined in *Mrao Limited –versus- First American Bank of Kenya and 2 Others* (2003) KLR 125 as a case which, based on the material presented to the court, a tribunal properly directing itself would conclude that there is a right apparently infringed by the opposite party, requiring an explanation or rebuttal from them. A prima facie case is more than an arguable case.
22. In *Nguruman Limited vs. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal held: -

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion ... The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed.”
23. In the present case, the plaintiff based its case on the alleged fact that the consolidation of the construction loan with other debts not secured by the suit property prejudiced his right of redemption and that the undervaluation of the suit property by the defendant was substantial enough to be ignored, thus all notices issued in relation to the charge over the suit property by the defendant are irregular, null and void.



24. It is undisputed that the applicant obtained a credit facility from the defendant sometime in May 2014 for a total principal amount of Kshs. 20 million. Furthermore, the plaintiff admits that it is in arrears on the said loan facility. The plaintiff's main objection is that the suit property has been significantly undervalued and that the defendant has failed to provide an accurate loan statement showing the repayments made, while continuing to charge interest at an excessively high rate.
25. Pursuant to Section 97 of the *Land Act*, a chargee has a duty of care towards a chargor to secure the best reasonable price at the time of selling the charged property. It provides: -
1. A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any charge under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of the sale.
 2. A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.
26. The importance of undertaking a forced valuation was explained in the case of *Koileken Ole Kipolonka Orumos v Mellech Engineering & Construction Limited & 2 Others* (2018) eKLR where Gikonyo J. held that:
- “...the forced sale valuation is not only for purposes of carrying through the public auction or solely for recovering the debt, but reinforces the rights of the charger to have reasonable value for his property. That is why the duty under section 97(2) of the *Land Act* is statutory and obligatory. It is not left to the whims of the charge and its agents especially the auctioneers.”
27. The plaintiff in the present case contends that the defendant failed to fulfill its duty under Section 97 of the *Land Act* because it significantly undervalued the suit property at Kshs. 42 million, as shown in a valuation report dated 3/2/2025. This valuation is a depreciation from the value the plaintiff himself determined, which placed the market value at Kshs. 62 million in a valuation report dated 4/3/2025.
28. Regarding the issue of debt consolidation, I note that the plaintiff, through his letter dated 27/2/2024, requested, on his own initiative, a waiver and consolidation of his debts. His allegations regarding this matter are therefore moot.
29. On the issue of valuation, the principles guiding courts in deciding whether or not to order an independent valuation have been discussed in the case of *Zum Zum Investments Limited v Habib Bank Limited* (2014) eKLR where the court held that: -
- “It is not sufficient for the applicant to merely claim that the intended selling price is not the best price obtainable at the time by producing a counter valuation report. The applicant must satisfactorily demonstrate why the valuation report that the respondent intends to rely on in disposing of the suit property does not give the best price obtainable at the material time.....The applicant needs to show, for instance, that the respondent's valuer is not qualified or competent to carry out the valuation, or that the valuation was carried out in consideration of irrelevant factors or that the valuation was done before the time of the intended sale.”



30. Similarly, in the case of *Palmy Company Limited v Consolidated Bank of Kenya Limited* [2014] eKLR the court held: -

“The onus of establishing on prima facie basis, that the applicant’s right has been infringed by the respondent by failing to discharge the duty of care under Section 97(1) of the Land Act lies on the applicant...The court needs cogent evidence and material in order to say that prima facie, there has been an undervaluation of the suit property which is an infringement of Section 97(2) of the Land Act by the respondent as to entitle the court to call for an explanation or rebuttal from the respondent.”

31. Guided by the principles outlined in the cases above, it is my considered opinion that the plaintiff has not provided evidence to establish that the valuation of the suit property was significantly undervalued. The plaintiff has failed to demonstrate that the valuer, Claytown Valuers Limited, was unqualified. Furthermore, the plaintiff did not specify any irrelevant factors considered by the valuers during their assessment. The court additionally notes that the valuation was conducted on 29/1/2025, which was two months prior to the scheduled public auction, in accordance with Rule 11(b)(x) of the Auctioneers Rules. Therefore, I am of the view that the defendant has complied with Section 97(2) of the Land Act. The plaintiff only presented a valuation report from Chrisca Real Estates Ltd, dated 4/3/2025, indicating a current market value of Kshs. 62 million.

32. The plaintiff has further criticised the defendant for failing to provide an accurate loan statement of accounts showing the repayments and for charging interest at a prohibitive rate. A review of the exhibits filed by the plaintiff reveals that the plaintiff was aware of the outstanding debt. It is based on this knowledge that he sought a waiver, an additional extension for loan repayment, and relief from the defendant.

33. In any case, a review of the pleadings reveals that the plaintiff has not provided any evidence indicating that it requested the bank statements either by email or correspondence. The defendant, on the other hand, has attached the loan statement to its replying affidavit.

34. Consequently, the applicant has failed to prove a prima facie case in its favour.

35. On the second principle of irreparable harm, in *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 Others* [2016] eKLR, the Court considered the Halsbury’s laws of England on what irreparable loss is and stated that: -

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

36. The plaintiff needed to demonstrate that it was likely to suffer harm that cannot be compensated on monetary sums. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, it was stated as follows on irreparable injury or damage: -

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable



remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

37. In this case, the plaintiff willingly entered into a contract and obtained a loan facility from the defendant. There has now been default. The defendant is a stable institution with sufficient capacity to compensate the plaintiff in the event that it suffers loss. The plaintiff fails also on the second limb of irreparable harm.
38. As to the balance of convenience, the same tilts in favour of allowing the defendant to recoup its outlay before the debt outstrips the security.
39. From the foregoing, it is evident that the plaintiff has failed to satisfy the conditions for the grant of an injunction.
40. Regarding the second prayer for the supply of bank account statements for Mortgage Account No. 01107094508300 and Current Account operated by Eliemmy Agencies Limited, as previously stated, the plaintiff has not provided any evidence that it requested the bank statements either by email or correspondence, and such request was denied. In any case, this prayer seeks the exercise of the court’s discretion. Accordingly, I exercise my discretion and grant the plaintiff this order.
41. Accordingly, the Court finds the application dated 19.3.2025 lacking merit and declines to grant a stay of sale of the suit property pending the hearing of the case. For avoidance of doubt, the application is partially successful, and the following order is issued:-
 - a. That the defendant shall supply the plaintiff with Bank statements for Mortgage Account No. 01107094508300 and Current Account operated by Eliemmy Agencies Limited within the next 14 days.
42. Costs shall be in the cause . It is so ordered.

DATED, SIGNED AND DELIVERED IN BUNGOMA ON THIS 3RD DAY OF MARCH 2026.

R. OUGO

JUDGE

In the presence of:

Plaintiff/ Applicant - Absent

Defendant/ Respondent - Absent ; Wilkister C/A

