

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC LC NO. E516 OF 2025

NYIRO HOMES LIMITED
PLAINTIFF

VERSUS

PRIME BANK LIMITED 1ST
DEFENDANT

VARUN SHARMA RAJINDER
(Sued in his own capacity and as the Executor
of the estate of SUBODH KUMARI SHARMA) 2ND
DEFENDANT

RULING

Background

1. Vide a Notice of Motion dated 8th October, 2025 brought pursuant to the provisions of **Sections 3A and 63** of the **Civil Procedure Act, Order 40 Rules (1) & (2), and Order 51 Rule (1)** of the **Civil Procedure Rules**, the Plaintiff/Applicant seeks the following reliefs:

- i. ***That Pending the hearing and determination of this suit, a temporary order of injunction be issued restraining the Defendants from offering for sale, selling by private treaty or by public auction, the 1st Defendant exercising its statutory power of sale or enforcing any of its***

rights under the Charge including taking possession of the suit property or alienating in any manner whatsoever all that property known as Land Reference No. 209/7507 (conversion Number Nairobi/Block 2/68) to any third party.

ii. *Costs be provided for.*

2. The Motion is premised on the grounds set out on its face and is supported by the affidavit of Dharmesh Shah sworn on even date. He deponed that by a charge registered against the title to Land Reference No. 209/7507 (Conversion Number Nairobi/Block 2/68) (*hereinafter the suit property*) on 4th July 2016, the property was charged to the 1st Defendant Bank to secure financial facilities granted to Premier Agencies of Kenya Limited and Shankan Enterprises Limited, with the property serving as a third-party charge.
3. Upon the death of Subodh Kumari Sharma, the registered owner of the suit property, the 2nd Defendant, as executor and beneficiary under her will, petitioned the High Court in **Succession Cause No. E185 of 2022** and was granted probate to her estate on 21st November, 2022. The same was subsequently confirmed on 27th January 2023, bearing the name of the 2nd Defendant as “Varun Sharma.”
4. According to Mr. Shah, he together with the 2nd Defendant entered into negotiations for the sale of the suit property at an agreed purchase price of Kshs. 105,000,000, which sum

was acceptable to the 1st Defendant as chargee. However, it emerged that the name of the 2nd Defendant as reflected in the probate, “Varun Sharma,” differed from the names appearing in his national identification card and passport, which is “Varun Sharma Rajinder.”

5. It was deposed that consequently, it was agreed during the pre-contract negotiations that the Grant of Probate and the Certificate of Confirmation of Grant would be amended in favour of the 2nd Defendant to reflect his full name as “Varun Sharma Rajinder,” thereby enabling the property to be transferred to him as a beneficiary and a title issued in that name for the eventual transfer of the property to the Plaintiff as purchaser.
6. He explained that this rectification was necessary because the property was to be converted into the new block title regime on the Ardhisasa online platform, a process that could only be undertaken after the aforesaid activities.
7. He noted that in the transaction, the Plaintiff, as purchaser, was represented by Harit Sheth Advocates, while the 2nd Defendant, as vendor, was represented by the firm of MW & Company Advocates, nominated by the 1st Defendant pursuant to the bank’s letter dated 2nd September, 2024 and that the appointment of MW & Company Advocates to represent both the vendor and the bank was a condition imposed by the 1st Defendant Bank in order to safeguard its interests in the transaction as chargee.

- 8.** Subsequently, it was deposed, and on the pre-contractual understanding alluded to, the Plaintiff and the Defendant executed an agreement for sale dated 19th November, 2024 for the said sum of Kshs. 105,000,000; that Clauses 4.2 and 4.3 (a) of the agreement obligates the vendor to obtain a converted title to the property in his name as a pre-condition to completion of the sale and that the Plaintiff duly paid the 10% deposit of Kshs. 10,500,000 on 29th November 2024 as provided under clause 3.1 of the said agreement.
- 9.** Mr. Shah maintains that the 1st Defendant was fully aware of these arrangements; that it not only nominated the advocates for the vendor, as aforesaid, to act for the 2nd Defendant to safeguard its interests, but further executed and endorsed its chargee's consent to the agreement for sale.
- 10.** By virtue of that consent, it was asserted, the 1st Defendant expressly agreed that it would not exercise its statutory power of sale over the property as chargee, during the subsistence of the agreement for sale.
- 11.** Mr. Shah argued that under clause 4.1 of the sale agreement, the completion period was stipulated as ninety (90) days from the date of the agreement, subject to clause 4.2, which required the obtaining of the converted title. He explained that this completion period was subsequently extended on two occasions, namely 14th February, 2025 and 28th May

2025, and that these extensions were made with the knowledge and express endorsement of the 1st Defendant.

- 12.** He asserted that the converted title to be issued in the name of Varun Sharma Rajinder constitutes the primary completion document under clause 4.3 of the sale agreement without which the parties are unable to complete the transaction. In that regard, the 2nd Defendant has since filed an application in High Court Succession Cause No. E185 of 2022 seeking the rectification referred to above, which application remains pending determination by the court.
- 13.** The deponent further averred that despite the 1st Defendant having endorsed its consent to the sale agreement and being fully aware of the pre-condition's precedent to completion, it, by a letter dated 26th August, 2025 addressed to the advocates for the vendor and copied to the advocates for the purchaser, purported to withdraw its consent and this withdrawal was allegedly premised on delay in completion, and the 1st Defendant consequently threatened to proceed with the sale of the property to third parties in exercise of its statutory power of sale.
- 14.** It was deposed that the Plaintiff's advocates wrote to the bank by a letter dated 1st September, 2025, clarifying the position under the sale agreement and that Counsel pointed out that completion was contingent upon the rectification of the probate documents to facilitate the issuance of a

transferable converted title, a process which was already underway before the Family Court.

- 15.** According to the deponent, despite having endorsed its consent to the sale agreement and being aware of the aforesaid pre-conditions to completion, the 1st Defendant by a letter dated 26th August, 2025 to the advocates for the vendor and copied to the advocates for the purchaser purported to withdraw its said consent on the ground of delay in completion and has threatened to sell the property to third parties under its statutory power of sale.
- 16.** By a letter dated 1st September, 2025 in response, the Plaintiff's advocates responded to the bank, setting out the relevant provisions of the sale agreement concerning the rectification of the probate documents to facilitate the issuance of a transferable converted title, a process that was already underway before the Family Court; that the Plaintiff disputes the bank's unilateral withdrawal of consent and affirm that the Plaintiff remains ready and able to complete the transaction upon issuance of the title in the correct names of the vendor.
- 17.** The Plaintiff contends that the 1st Defendant's actions in advertising the suit property for sale by public auction constitute a breach of the sale agreement dated 19th November 2024, to which the 1st Defendant had expressly consented as chargee.

- 18.** In any event, it was deposed, the 1st Defendant cannot presently exercise its statutory power of sale because the registered proprietor is deceased and the property has not yet been transmitted to the 2nd Defendant, a process that also awaits rectification of the Grant of Probate and Certificate of Confirmation of Grant to reflect his correct names and that the interim reliefs sought are necessary to preserve the substratum of the suit pending determination of the main suit.
- 19.** The 1st Defendant filed a replying affidavit sworn by George Wachira Mathui, a senior legal manager with the 1st Defendant bank on 21st November, 2025. He urged that the Motion and the entire proceedings are incompetent on the basis that the Plaintiff is neither the chargor in relation to the suit property nor a party to the charge instruments and therefore lacks the requisite legal standing to challenge the intended exercise of the chargee's statutory power of sale for want of privity.
- 20.** Further, that in so far as the present proceedings are predicated upon the sale agreement dated 19th November, 2024, no sustainable claim can lie against the 1st Defendant, as it is not a party thereto in any capacity and does not bear any contractual obligation thereunder capable of enforcement by the Plaintiff.
- 21.** He explained that the joinder of the 2nd Defendant into the proceedings when no specific and effective relief is sought

against him is indicative of possible complicity between the Plaintiff and the 2nd Defendant to frustrate the 1st Defendant's lawful efforts to recover the debt secured by way of legal charges over the suit property and is therefore a gross abuse of the process of this court.

- 22.** He urged that at any rate, in so far as the suit seeks to challenge an intended exercise of a chargee's statutory power of sale pursuant to legal charges registered over the suit property, this court does not enjoy the requisite jurisdiction to hear and determine the same.
- 23.** Mr. Mathui urged, on a without prejudice basis that the Motion does not meet the legal threshold for the grant of the plea sought as first, the suit property constitutes security comprised in a legal charge and further legal charge created and registered in favour of the 1st Defendant for the repayment of credit facilities granted by the 1st Defendant in the ordinary course of its business as a licensed financial institution to Premier Agencies of Kenya Limited and Shankan Enterprises Limited (both hereinafter the "Borrowers") for the aggregate principal sum of Kshs. 161,000,000 exclusive of interest and other bank charges.
- 24.** On account of continued default by the borrowers and the chargor in meeting their repayment obligations under the respective legal charges referred to hereinabove, the 1st Defendant recalled the secured facilities in terms of the demand letters dated 1st February, 2022 addressed to the

borrowers with copies to the chargor and the 2nd Defendant in their capacities as guarantors for the repayment of the facilities.

- 25.** It is the 1st Defendant's case that the aforesaid recall notices were not heeded by the addressees as a consequence of which the 1st Defendant set in motion the process of realizing its security comprised in the legal charges registered in its favour over the suit property and that as demonstrated hereinabove, it issued the requisite 3 months' statutory notices dated 3rd February, 2023 from M/s Kiruti & Co. Advocates to the 2nd Defendant as the executor of the estate of the deceased chargor in line with the requirements of **Section 90** of the **Land Act**.
- 26.** The 1st Defendant's Legal Manager deposed that in compliance with the law and upon the expiry of the statutory notices referred to, the 1st Defendant as the chargee caused to be issued the requisite 40 days' notices of intention to sell as required by the provisions of **Section 96(2)** of the **Land Act** which notices were dated 31st July, 2023 duly served by way of registered post as confirmed by copies of postage receipts.
- 27.** Subsequently, the 1st Defendant instructed M/s Garam Investments Auctioneers to arrange for sale of the suit property in exercise of its chargee's statutory power of sale; that the sale was scheduled for 16th January, 2024 and served the requisite 45 days' redemption notice and notification of

sale dated 24th October, 2023 as required under the provisions of the Auctioneers' Rules, 1997. The scheduled public auction aforesaid was duly advertised in the Daily Nation newspaper publication of 18th December, 2023.

- 28.** According to Mr. Mathui, he is aware that at the express request of the 2nd Defendant in his capacity as the executor of the estate of the deceased chargor and a director of the borrowers, the 1st Defendant agreed to postpone the scheduled public auction of the suit property on the basis of the written commitments from the 2nd Defendant.
- 29.** The aforesaid, he deposed, included an acknowledgment that he had made previous promises and commitments to repay the secured facilities which had not been honored, and an acknowledgement that the outstanding secured debt due and owing from the borrowers was as stated in the auctioneers' notices.
- 30.** Mr. Mathui conceded that the 1st Defendant would be at liberty to proceed with the public auction of the suit property without any further reference to him if he would not have either found a buyer for the same and entered into an agreement for sale or reduced the borrowers liability by at least USD 300,000, in either case by 15th March, 2024, and he would meet the charges occasioned by the postponement of the scheduled public auction.
- 31.** He explained that in requesting the 1st Defendant to be allowed to source for a buyer for the suit property, the 2nd

Defendant in his capacity as the executor of the estate of the charger expressly acknowledged that by virtue of the chargors covenants set out under clause 4.1.11 of the charge and further legal charge, it was obligated to obtain the prior written consent of the 1st Defendant in respect of any intended sale and transfer of the suit property by way of private treaty.

- 32.** It is his belief, he stated, that whether or not the 1st Defendant as the chargee was to grant such consent and if so, the manner of processing the same was exclusively a matter of contract between it and the chargor represented by the 2nd Defendant such that no other non-contracting party under the said legal charge can purport to claim any benefit of right thereunder as the Plaintiff purports.
- 33.** Mr. Mathui conceded that he is aware that the 2nd Defendant procured the Plaintiff as a potential purchaser of the property and to ensure that its interests were not jeopardized, it required the 2nd Defendant to engage a law firm in its panel of external lawyers to represent him. This does not however change the obtaining position that the 1st Defendant was not a party to the agreement.
- 34.** Contrary to the Plaintiffs allegations, he stated, the terms of the agreement for sale were clear that the same reflected the entire dealings between the Plaintiff and the 2nd Defendant, completion was on or before ninety days from the date of the agreement for sale, the 2nd Defendant was entering into the

sale transaction in his capacity as executor of the estate of the deceased chargor and the transaction was subject to the 2nd Defendant obtaining the 1st Defendants' consent.

- 35.** As such, he urged, depositions referencing pre-contract negotiations on amendments to any probate documents or the allegation that the execution of the agreement was conditional upon the 1st Defendant not agreeing to exercise its statutory power of sale has no foundation.
- 36.** In any event, he asserted, assertions that the agreement could not have been processed within the completion period on the basis that the converted title had not been issued in the 2nd Defendant's name has no foundation because, as per the will, the suit property was not bequeathed to the 2nd Defendant and he could only enter into the agreement for sale in his capacity as the executor of the estate of the deceased chargor.
- 37.** The Bank's Legal Manager deposed that as per **Section 61(2)** of the **Land Registration Act** as read with **Regulation 58** of the **Land Registration (General) Regulations**, an effective transfer of the suit property in favour of the Plaintiff would not require title to be issued in the 2nd Defendant's name.
- 38.** Mr. Mathui stated that vide the letter dated 5th September, 2025, the 1st Defendant informed the 2nd Defendant that it had withdrawn its conditional consent to the transaction

contemplated under the sale agreement and that in the meantime, the borrowers accounts continue to be grossly out of order and as at 17th November, 2025, the balances were as follows- Shankan Enterprises Ltd-1, 936, 435.45 @ 24.0 % interest and 92, 706, 421.74 @ 22% interest and Premier Agencies of Kenya Limited-Kshs 72, 701, 886.29 @ 22% interest.

- 39.** He stated that the borrowers whose common director and main driver is the 2nd Defendant have not paid a single penny in the borrowed accounts since January, 2024 and that the suit property, which constitutes the only tangible security held by the 1st Defendant, was valued at Kshs 140,000,000 as the open market value and Kshs 105,000,000 as the forced sale value.
- 40.** It was contended that the secured liabilities already exceed the value of the property and that any further delay in the realization of the security would only increase the 1st Defendant's exposure with no guaranteed prospect of full recovery. In the circumstances, it was urged, justice demands that the 1st Defendant be permitted to realize its security.
- 41.** In response, the 2nd Defendant, Varun Sharma Rajinder, filed a replying affidavit sworn on 5th February 2025. He deponed that he is the executor of the estate of the late Suboth Kumari Sharma, having obtained a Grant of Probate on 21st November 2022, which was later confirmed on 27th January 2023.

- 42.** According to him, the deceased was the registered proprietor of the suit property which had been bequeathed to her as a beneficiary of the estate of Rajinder Kumari Sharma. During her lifetime, the deceased executed a third-party charge in favour of the 1st Defendant to secure facilities advanced to Premier Agencies of Kenya Limited and Shankan Enterprises Limited through a first charge dated 29th April, 2016 and a further charge dated 16th March 2021.
- 43.** The 2nd Defendant deposed that at the time of her demise, the late Suboth Kumari Sharma had outstanding obligations under the charge executed in favour of Prime Bank Limited, which obligations required settlement and that following default in repayment, the 1st Defendant moved to exercise its statutory power of sale over the charged property and scheduled a public auction for 16th January 2024.
- 44.** It was deposed that in response, the 2nd Defendant, in his capacity as executor, requested the bank to postpone the sale on the basis that the property constituted the family residence, and undertook to source funds from family members or obtain alternative financing to settle the outstanding obligations. He subsequently informed the bank that he was actively seeking a purchaser who could acquire the property and apply the proceeds towards repayment of the loan.

- 45.** He deponed that he eventually identified the Plaintiff, through its director Dharmesh C. Shah, who expressed interest in purchasing the property and that following negotiations, the parties agreed on a purchase price of Kshs. 105,000,000, and the 1st Defendant, as chargee, consented to the sale by a letter dated 2nd September 2024, directing that the purchase price be deposited into a designated account with the bank.
- 46.** The 2nd Defendant stated that to safeguard its interests, the bank appointed MW & Company Advocates LLP to act as joint advocates for both the bank and the 2nd Defendant in the transaction and that following the bank's consent, the parties entered into a sale agreement dated 19th November, 2024, which provided for completion within ninety (90) days, subject to conversion of the title and issuance of a replacement title through the Ardhi Sasa platform.
- 47.** However, during due diligence it emerged that his identification documents bore the name "Varun Sharma Rajinder," whereas the Grant of Probate and Certificate of Confirmation of Grant reflected the name "Varun Sharma" and that it was therefore agreed that the grant would be rectified to ensure uniformity of names to facilitate transfer of the property.
- 48.** Following execution of the agreement, he explained, the Plaintiff paid a 10% deposit of Kshs. 10,500,000 on 29th November 2024, in accordance with the terms of the

agreement. Thereafter, he filed summons for rectification of grant dated 20th December, 2024 in **Succession Cause No. E185 of 2022**, which remains pending before the Probate Court and the delay in completion of the transaction was solely attributable to the pending rectification of proceedings.

- 49.** Despite being aware of the ongoing succession proceedings and having previously consented to the private treaty sale, it was deposed that the 1st Defendant later withdrew its consent through a letter dated 26th August, 2025 and threatened to exercise its statutory power of sale by disposing of the property through public auction and that the property was subsequently advertised for sale by Garam International Auctioneers in the Daily Nation newspaper of 29th September 2025, with the auction scheduled for 21st October 2025.
- 50.** The deponent maintains that the bank's actions were undertaken in bad faith, given that the private treaty sale had been initiated with its consent and participation. He contended that the Plaintiff had demonstrated good faith by paying the contractual deposit and complying with the sale agreement. He asserted that unless restrained by the court, the intended public auction would defeat the existing sale agreement dated 19th November 2024, expose him to liability for breach of contract, and undermine the legitimate expectations of the parties.

- 51.** Vide a further affidavit dated 9th January, 2026, the Plaintiff, through Mr. Dharmesh Shah, reiterated his averments as set out in his supporting affidavit further deponing that the 1st Defendant cannot seriously seek to distance itself from the agreement for sale over the suit property which it expressly endorsed in writing.
- 52.** With respect to *locus standi*, he asserted that the Plaintiff's standing arises from the sale agreement entered into with the 2nd Defendant in respect of the suit property. He denied any alleged complicity between himself and the 2nd Defendant in the institution of the present suit.
- 53.** He further stated that the principal relief sought in the Plaint is an order of specific performance of the aforesaid sale agreement, which agreement bears the consent of the 1st Defendant as chargee. Therefore, he argued, it is inaccurate to suggest that no specific or effective relief has been sought against the 2nd Defendant.
- 54.** He reiterated that the only outstanding step for completion of the agreement is the rectification of the Grant and the Certificate of Confirmation of Grant to enable the issuance of the converted title in the name of the 2nd Defendant, after which the property would be transferred to the Plaintiff upon payment of the balance of the purchase price through the 1st Defendant.

55. Mr. Shah dismissed as misleading the assertion that the suit property was not bequeathed to the 2nd Defendant under the will. He pointed out that clause 4 of the will expressly bequeaths the entire estate to the 2nd Defendant absolutely maintaining that it is incorrect to suggest that the 2nd Defendant could directly transfer the property to the Plaintiff without first obtaining a converted title in his name as beneficiary.

Submissions

56. The Plaintiff/Applicant filed its submissions on 9th January, 2026. Counsel reiterated the Plaintiff's case as set out in the supporting affidavit to the Motion, contending that the material facts disclosed therein establish a prima facie case with a probability of success.

57. In particular, reliance was placed on the existence of the sale agreement, the 1st Defendant's express consent to that agreement, the agreed preconditions to completion, the ongoing process for rectification of the grant, and the threat of sale of the suit property notwithstanding those arrangements.

58. Counsel further submitted that the Plaintiff's *locus* arises directly from the said agreement and from the rights accruing from the 1st Defendant's endorsement of consent. It was argued that the 1st Defendant had misled the court by asserting that the suit property was not bequeathed to the

2nd Defendant, while also misapprehending the import of **Section 61(2)** of the **Land Registration Act**.

- 59.** According to Counsel, the provision permits transmission only by personal representatives to beneficiaries named in a confirmed grant, and does not sanction direct transfer to third parties such as the Plaintiff. Further still, it was urged, the registered proprietor of the property is deceased and the property has not yet been transmitted to the 2nd Defendant, whether as executor or beneficiary, and therefore the statutory prerequisites for the exercise of such power have not crystallized.
- 60.** Counsel further contended that the Plaintiff stands to suffer irreparable injury that cannot be adequately compensated by an award of damages if the property is sold. The suit property, it was argued, is unique to the Plaintiff's intended investment plans, and any sale thereof would defeat the relief of specific performance sought and render the trial purely academic.
- 61.** It was therefore urged that the balance of convenience tilts in favour of preserving the substratum of the suit. In those premises, Counsel submitted that the present case satisfies the principles for the grant of interim relief as set out in **Giella vs Cassman Brown & Co. Ltd [1973] EA 358.**
- 62.** The 1st Defendant filed submissions on the 9th February, 2026. Counsel submitted that the principles governing the

grant of temporary injunctive orders are well settled, *to wit*, demonstration of prima facie case, irreparable injury should the injunction be denied and the court ought to determine the same on a balance of probabilities. In this regard Counsel cited **Gulf African Bank Limited vs Mohamid Sheikh Hussein [2018] eKLR.**

63. It was asserted that a challenge to an intended exercise of a charges statutory power of sale cannot as a matter of law be mounted at the instance of a someone who is not a party to the instrument as expressed in **Moss Enterprises Limited vs Notem Auctioneers & Another [2021]eKLR;** further, that the 1st Defendant was not party to the sale agreement referenced by the Plaintiff and that upon the withdrawal of the consent to sell, the Plaintiff cannot maintain a cause of action against the 1st Defendant. The case of **Menengai Stores Limited vs Blue Nile Wire Products Limited & Another [2024]KEELC 4957 (KLR)** was referenced in support.
64. Lastly, it was asserted that the completion period for the transaction has since lapsed and no extension of the same has been sought as demonstrated. Reliance was made to the decision **Macho & Another vs Athuman & 2 Others [2025]KECA 2078** for the proposition that a claim for enforcement of the transaction contemplated under the lapsed agreement for sale cannot lie at the instance of the Plaintiff or at all.

65. The 2nd Defendant filed written submissions on 5th February 2026. Counsel submitted that the applicable principles for the grant of injunctive relief are those in **Giella vs Cassman Brown [1973] EA 358**, as reaffirmed by the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**.
66. Counsel submitted that the Plaintiff had established a prima facie case as defined in **Mrao Ltd vs First American Bank of Kenya & 2 Others [2003] eKLR**, arguing that its rights arise from the agreement dated 19th November, 2024; that although completion was not achieved within the initial ninety days, the period had been extended and that the delay arose from the legitimate rectification of the Grant and Certificate of Confirmation of Grant pending in Succession Cause No. E185 of 2022, a process the bank was fully appraised of.
67. It was argued that the subsequent advertisement of the property for auction in the Daily Nation of 29th September, 2025 for sale on 21st October, 2025 constituted a bad-faith departure from the agreed private treaty. Reliance was placed on **Martevé Guest House Ltd vs Njenga & 3 Others [2022] KECA 539 (KLR)** and **Mbuthia vs Jimba Credit finance Corporation & another (1988)** for the proposition that a chargee must exercise its statutory power of sale in good faith and with due regard to the chargor's interests.

- 68.** On irreparable harm, Counsel cited **Nguruman Limited** (***supra***) and submitted that if the auction proceeds, it would permanently extinguish the 2nd Defendant's contractual and equitable right to complete the private treaty transaction, loss incapable of adequate compensation once the property is sold.
- 69.** Further, it was submitted, it would be exposed to avoidable litigation, including potential claims for specific performance under the agreement for sale, and would occasion multiplicity of suits. It was therefore argued that injunctive relief is necessary to preserve the substratum of the transaction pending determination.

Analysis and determination

- 70.** Having considered the Motion, and responses, the issues that arise for determination are:
- i. Whether the Motion is competent; and if so?*
 - ii. Whether the Plaintiff/Applicant has met the threshold to warrant the grant of a temporary injunction?*
- 71.** Vide its response to the Motion, the 1st Defendant raised a threshold objection to the competence of the proceedings, contending, first, that this court lacks jurisdiction to entertain the dispute and, secondly, that the Plaintiff lacks the requisite *locus standi* to seek the injunctive reliefs prayed for.

72. The gravamen of that objection is that first, in so far as the suit seeks to challenge the intended exercise of a chargee's statutory power of sale pursuant to legal charges registered over the suit property, such a dispute falls outside the jurisdiction of this court.
73. Second, that the Plaintiff is neither a chargor nor a party to the charge instruments and therefore cannot challenge the 1st Defendant's intended exercise of its statutory power of sale. It was further contended that, since the 1st Defendant was not a party to the agreement for sale dated 19th November, 2024, no enforceable cause of action can lie against it.
74. The Plaintiff, with the support of the 2nd Defendant, disputes that position. Their case is that the dispute concerns the intended sale of the suit property, that the Plaintiff's claim to purchaser's rights arise from the agreement for sale, and the legitimacy of the 1st Defendant's withdrawal of its consent to the aforesaid sale agreement issues touching on title to, occupation of, and interests in land within the remit of this court.
75. It is trite that jurisdiction is everything and must be determined at the earliest opportunity, for without it a court must down its tools. See ***Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1.*** Equally, as the Supreme Court stated in ***Samuel Kamau Macharia & another vs Kenya Commercial Bank Ltd &***

2 Others [2012] eKLR, a court's jurisdiction flows from the Constitution or legislation and cannot be arrogated by judicial craft.

76. This court derives its jurisdiction from **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**, which confers upon it authority to hear and determine disputes relating to the environment and the use, occupation of, and title to land, including disputes concerning contracts and instruments that create or affect interests in land.
77. Looking at the pleadings, the court considers that the jurisdictional objection by the 1st Defendant is not well taken. The Plaint and the Motion disclose a contest over the propriety of the threatened alienation of the suit property in the face of an existing agreement for sale, the 1st Defendant's written consent thereto, and the Plaintiff's claim for specific performance.
78. Indeed, even where a charge is involved, the court must look to the predominant issue disclosed in the pleadings. Here, that predominant issue is whether the suit property ought to be preserved pending determination of the Plaintiff's asserted contractual and equitable rights in relation to that land.
79. Similarly, the court finds no merit in the contention that the Plaintiff lacks *locus standi*. The Plaintiff is not before the

court as a stranger meddling in a charge relationship to which it has no discernible connection.

- 80.** On the contrary, it anchors its claim on a sale agreement entered into with the 2nd Defendant in respect of the suit property, under which it paid a deposit and on the basis of which it seeks specific performance. It further pleads that the agreement was executed with the express written consent of the 1st Defendant as chargee, and that the threatened auction would defeat the contractual and proprietary interests it asserts under that transaction.
- 81.** Whether those claims will ultimately succeed is a matter for trial; but at this interlocutory stage, they are plainly sufficient to clothe the Plaintiff with standing to approach the court for protective relief. This assertion too fails.
- 82.** The grant of interlocutory injunctions is governed by **Order 40 Rule 1** of the **Civil Procedure Rules, 2010**. The provision empowers the court to issue a temporary injunction where it is demonstrated, by affidavit or otherwise, that the property in dispute is in danger of being wasted, damaged, or alienated, or where a defendant threatens to dispose of property in circumstances that may obstruct or delay the execution of any decree that may ultimately be issued.
- 83.** In determining whether a plea for injunction is merited, the court must have regard to the well-settled principles enunciated in ***Giella vs Cassman Brown & Co. Ltd [1973]***

EA 358, namely, that an applicant must establish a *prima facie* case with a probability of success, demonstrate that irreparable injury would result if the injunction is not granted, and where the Court is in doubt, the matter is to be determined on a balance of convenience.

- 84.** The applicant must satisfy these three requirements sequentially. As affirmed by the Court of Appeal in **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**, the establishment of a *prima facie* case, proof of irreparable harm, and the balance of convenience are distinct and logical hurdles, each of which must be satisfied before the court can grant interlocutory injunctive relief.
- 85.** Beginning with a *prima facie* case, as cited by the parties, the same was succinctly defined in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** thus:

“...So what is a prima facie case? I would say that in civil cases it 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 as to call for an explanation or rebuttal from the latter.”

- 86.** In **Nguruman Limited vs Jan Bonde Nielsen & 2 Others(supra)**, the Court of Appeal affirmed the definition

of a *prima facie* case in ***Mrao Ltd vs First American Bank of Kenya Ltd(supra)*** and clarified that an applicant must demonstrate a clear and identifiable right that is directly threatened by the act sought to be restrained. The invasion of the right must be substantive and that there must be urgency to prevent irreparable harm.

- 87.** It further held that, at the interlocutory stage, the court does not conduct a mini-trial but only determines whether the applicant has shown a *bona fide* and arguable claim, proved on a balance of probabilities, which appears more likely than not to ultimately succeed.
- 88.** The court will be so guided.
- 89.** By way of brief background, the Plaintiff seeks vide the suit, *inter-alia*. for permanent injunctive orders restraining the 1st Defendant from selling the suit property in exercise of its statutory power of sale, a declaration that the Plaintiff and the 2nd Defendant can only complete the agreement upon issuance of a converted title deed, orders for specific performance of the agreement of 19th November, 2024 and exemplary and punitive damages.
- 90.** Also sought are orders stopping the 1st Defendant from enforcing its rights as chargee in a manner prejudicial to the sale agreement dated 19th November, 2024. It is the Plaintiff's case that it entered into an agreement with the 2nd Defendant over the sale of the property, an agreement consented to by the 1st Defendant, the chargee thereof, and

that it has, pursuant to the agreement, paid the contractual deposit of Kshs. 10,500,000.

- 91.** The Plaintiff's further case is that the said agreement was not only known to the 1st Defendant, but was also expressly sanctioned by it as chargee and that under that arrangement, the 1st Defendant undertook not to exercise its statutory power of sale during the subsistence of the sale transaction.
- 92.** The Plaintiff further contends that completion was contingent upon rectification of the Grant of Probate and Certificate of Confirmation of Grant to reflect the 2nd Defendant's full names, and the subsequent issuance of a converted title through the ArdhiSasa platform, all of which were matters within the knowledge of the parties from the outset.
- 93.** Its complaint, therefore, is that the 1st Defendant's withdrawal of consent and renewed attempt to sell the suit property by public auction, before completion of the agreement amounts to a threatened violation of its accrued contractual and equitable rights for which preservative relief is warranted.
- 94.** On its part, the 1st Defendant contends that the dispute, if any, is founded on an agreement for sale to which it was not a party to, and from which no enforceable obligations can lie against it.

- 95.** In any event, it is urged, the secured facilities remain in default; the statutory notices required under **Sections 90 and 96** of the **Land Act** were duly issued; that the realization process had commenced long before the impugned agreement for sale; and that its consent to the proposed private treaty sale was conditional and was lawfully withdrawn when the transaction was not completed within time.
- 96.** The 1st Defendant also disputes the Plaintiff's assertion that transmission and conversion of title in the 2nd Defendant's name was indispensable to completion, contending instead that the 2nd Defendant acted merely as executor and that the intended sale could proceed without the steps now relied upon by the Plaintiff. The 1st Defendant argues that no *prima facie* case has been shown against it and that the Motion is an attempt to obstruct the lawful realization of its security.
- 97.** To begin with, it is not disputed that the 1st Defendant is the chargee over the suit property and that the facilities secured by the charge and further charge remain outstanding. It is equally not in dispute that, in an effort to procure funds towards liquidation of the debt, the 2nd Defendant sourced the Plaintiff as a purchaser and the two entered into the agreement for sale dated 19th November, 2024.
- 98.** The Plaintiff has exhibited an executed agreement for sale together with proof of payment of the contractual 10% deposit. Significantly, page 20 of the said agreement bears

the written consent of the 1st Defendant as chargee, duly executed.

- 99.** The agreement itself further refers to the necessity of conversion of the title and the issuance of a converted title in the vendor's name as a precondition to completion.
- 100.** The Plaintiff has further demonstrated that the 2nd Defendant has instituted proceedings before the Family Court seeking the rectification of the Grant and Certificate of Confirmation of Grant so as to reflect his full name. These proceedings, which are currently pending, are intended to facilitate the conversion and issuance of a transferable title in his name as a beneficiary.
- 101.** In the courts view, the material placed before it discloses a genuine and arguable controversy concerning the rights arising from the impugned transaction and the propriety of the threatened realization of the charged property. The issues surrounding the effect of the chargee's consent, the completion framework contemplated by the agreement, and the consequences of the delay occasioned by the pending rectification proceedings are matters that require full ventilation at trial.
- 102.** At this interlocutory stage, those questions cannot be dismissed as frivolous, idle or fanciful. They disclose an alleged right which calls for investigation and protection by the court at an interlocutory stage Accordingly, the court is satisfied that a *prima facie* case has been established.

- 103.**With respect to irreparable harm, the Applicant must demonstrate that the injury likely to be suffered cannot be adequately remedied by an award of damages. As stated in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR*, the burden lies on the applicant to show that the threatened injury is real, substantial, and incapable of adequate compensation in damages, and not merely speculative or based on apprehension.
- 104.**In the present case, the threatened injury is not merely the loss of a commercial opportunity in the abstract. The Plaintiff has exhibited an existing agreement for sale, payment of the contractual deposit, and a pending claim for specific performance founded on a transaction which, on the material placed before the court, had the knowledge and initial consent of the 1st Defendant as chargee.
- 105.**The Plaintiff's claim includes enforcement of a specific bargain over an identified parcel of land. Once the property passes to a third party, particularly through an auction conducted in exercise of statutory power of sale, the Plaintiff's claimed right under the agreement may be permanently defeated, and the principal relief sought in the main suit rendered illusory. Further, such sale would in this circumstance likely precipitate further disputes.
- 106.**Ultimately, the court is persuaded that the injury apprehended is not one that can be adequately atoned for by

damages alone. The court is satisfied that irreparable injury has been demonstrated.

107. As regards the balance of convenience, the court harbours no doubt that the same tilts in favour of preserving the suit property pending the hearing and determination of the suit. Such preservation ensures that the substratum of the dispute is maintained and that the rights asserted by the parties are not rendered nugatory before they can be fully ventilated at trial.

108. In the end, the court finds the Notice of Motion dated 8th October, 2025 to be merited and proceeds to grant the following reliefs:

- a) A temporary injunction is hereby issued restraining the Defendants, whether by themselves, their agents, servants, or otherwise howsoever, from offering for sale, selling by private treaty or public auction, exercising the statutory power of sale, taking possession of, alienating, or in any other manner dealing with Land Reference No. 209/7507 (Conversion No. Nairobi/Block 2/68), or enforcing any rights arising under the Charge over the said property, pending hearing and determination of this suit.**
- b) Costs shall be in the cause.**

Dated, signed and delivered virtually in Nairobi this 19th day of March, 2026.

**O. A. Angote
Judge**

In the presence of:

Mr. Koech for Plaintiff/Applicant

Mr. Mutua for 1st Defendant/Respondent

Mr. Mwangi for Mr. Otwal for 2nd Defendant/Respondent

Court Assistant: Tracy