



REPUBLIC OF KENYA



Aduol v Tumbo t/a Sparknet Auctioneers & another (Civil Case E026 of 2025) [2026] KEHC 3984 (KLR) (25 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3984 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E026 OF 2025
A MABEYA, J
MARCH 25, 2026**

BETWEEN

DENNIS ODUOR ADUOL APPLICANT

AND

**MZUNGU SAMSON TUMBO T/A SPARKNET AUCTIONEERS 1ST
RESPONDENT**

PRIDE KINGS SECURITY SERVICES LIMITED 2ND RESPONDENT

RULING

1. By a Plaint dated 6/10/2025, the applicant pleaded that he is the registered owner of the property known as LR. No. Uholo/Rambula/1240 “the suit property”. That the defendants have commenced the process of advertising the same with a view to selling it by public auction.
2. That the sale was as a result of a decree made in the Small Claims Court in Ksm SC Commercial Case No. E269 of 2023 between Pride Kings Security Services Ltd vs Multiplex Enterprises Ltd to recover a sum of Kshs.400,000/- being the balance of the decretal amount entered against the said Multiplex Enterprises Ltd.
3. He alleged that he was not a party in the said suit and that the suit property was not available for attachment and sale. The therefore sought a permanent injunction to restrain the defendants from interfering with his quiet possession of the suit property.
4. Contemporaneous with the Plaint, the applicant lodged a Motion on Notice dated 6/10/2025 under Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules seeking a temporary injunction to restrain the respondents from undertaking the threatened public auction. The Motion was supported by the applicant’s affidavit sworn on even date.



5. The grounds for the Motion as stated both in the body of the Motion and supporting affidavit were as stated in the Plaint. He insisted that he and the defendant in Ksm SMCOMM Case No. E269 of 2025 (Multiplex Enterprises Ltd) were separate and distinct. That it was the said defendant in that suit that was legally bound to settle the said decretal amount and not him.
6. He produced as evidence, a copy of the title for the suit property, photographs of the developments undertaken on the suit property, a 45 days Redemption Notice dated 29/9/2025 by the 1st respondent, a Notification of Sale set for 14/11/2025 and a judgment in the aforesaid suit dated 22/8/2023. He prayed for the said temporary injunction pending the hearing of the suit.
7. The Motion was opposed vide a replying affidavit of Fredrick Okello Mashuke sworn on 30/10/2025. It admitted the applicants' averments but went further. It explained that upon the failure by Multiplex Enterprises Ltd to settle the decretal sum in the SCC Case, a Notice to Show Cause was issued to the applicant as a director of the said company. Upon appearing, he pleaded with the Small Claims Court for time and gave the suit property as security. He was given 90 days to settle the decretal sum but failed. That the applicant was therefore guilty of material non-disclosure which had enabled him to secure an ex-parte temporary injunction. The Court was urged to dismiss the application.
8. Before Court is an application for a temporary injunction pending the hearing and determination of the suit. The principles applicable are well settled in the case of Giella vs Cassman Brown (1973) EA. These are that an applicant must establish a prima facie case with a probability of success, that damages will be inadequate compensation if the injunction is not granted and if the Court is in doubt, it will determine the application on the balance of convenience.
9. Is there a prima facie case with a probability of success? Firstly, the matters that were deposed to by the respondent in the replying affidavit were never denied or challenged. That means that when the applicant approached this Court, he failed to disclose that the Small Claims Court had determined a Notice to Show Cause against the applicant and ordered that he be liable for the debt of his company. That was a serious material non-disclosure.
10. Secondly, the procedure adopted by the applicant is not known in law. If a decree/holder seeks to execute his decree against a wrong person, a person who was not a party to the proceedings in which the decree was issued, the proper procedure is not to file a separate suit but to take out objection proceedings in the same proceedings. It is in the objection proceedings that the innocent party is required to establish his innocence and his legal or equitable right in the subject matter that has been attached that empowers the executing Court to raise the execution. The Civil Procedure Rules have elaborate provisions to that effect.
11. Given, in the circumstances of this case, the applicant could not take that route. He had appeared before the Small Claims Court and a determination made. That is why he sought to rush to this Court for an injunction. That was wrong.
12. If the applicant was aggrieved by the decision of the Small Claim Court of lifting the corporate veil, he had the right to appeal to this Court. He decided not to do so. A party cannot challenge a decision of another Court by way of a suit. It should have been either by way of appeal or as provided for by law. This application therefore is not only flawed but amounts to an abuse of the process of the Court.
13. Thirdly, the only relief sought in the Plaint is an injunction. The applicant did not seek to have the proceedings before the Small Claims Court declared unlawful, irregular or a nullity. Those proceedings being left intact, they cannot be challenged or restrained by an order of injunction.



14. By that as it may, this Court has made a finding that the applicant failed to make material disclosure. He failed to disclose that the attachment he is seeking to injunct was as a result of proceedings which he had participated in (the Notice to Show Cause and the attendant result therefrom).
15. In view of the foregoing, the Court finds that the case relied on by the respondents of Madara Evans Okanga Dondo vs Housing Finance Company of Kenya (2005) KEHC 506 (KLR). In that case, Kimaru J (as he then was) observed: -

“The plaintiff made the averment and further swore the verifying affidavit knowing very well that he was not telling the truth. Indeed, the plaintiff succeeded in duping this Court into granting him temporary orders of injunction whereas had this Court been aware of the existence of the previous suit most probable it would not have made such interim orders. As submitted by the defendant, the plaintiff failed to make material disclosure to this Court when he sought the said interim orders.”
16. This Court reiterates that foregoing here in total. Luckily there were no interim orders made in this suit. In any event none would have been issued had the Court been made aware that the intended execution was as a result of Notice to Show Cause proceedings that had been concluded before the Small Claims Court and had not been challenged on appeal.
17. With all the foregoing, it is clear that the applicant has not established any prima facie case with any likelihood of success.
18. Being of that mind, there arises no need to consider the other two principles in Geilla vs Cassman Brown. But since this is not the final Court, if this court’s opinion is required, it is simple. There is no likelihood of suffering irreparable loss. There can’t be irreparable loss in complying with a lawful court order. In any event, the loss can be compensated by an award of damages.
19. As regards convenience, it lies with not impeding a lawful court process by an unknown procedure in Law.
20. Accordingly, the application dated 6/10/2025 is without merit. The same is dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF MARCH, 2026.

A. MABEYA, FCI Arb

JUDGE

