



**Home Afrika Limited v I&M Bank Limited & another (Commercial Case E026 of 2025)  
[2026] KEHC 4006 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E026 OF 2025  
JWW MONG'ARE, J  
MARCH 19, 2026**

**BETWEEN**

**HOME AFRIKA LIMITED ..... PLAINTIFF**

**AND**

**I&M BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**MITINI SCAPES DEVELOPMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 16<sup>th</sup> January 2025 the Plaintiff seeks an injunction to stop the sale by way of public auction of the property, Unit No. 2 on the 5<sup>th</sup> Floor of Morning Side Office Park erected on LR No. 2/704 together with parking bays 74,75,80 and 81 on the ground floor and 169,170,171 and 172 on the Basement(“the suit property”) pending the hearing and determination of the suit. The application is supported by the grounds on its face and the affidavits of the Plaintiff’s Managing Director, Jane Nyokabi Gathoni, sworn on 16<sup>th</sup> January 2025 and 16<sup>th</sup> December 2025. The 2<sup>nd</sup> Defendant also supports the application through the replying affidavit of its director, Mbugua Gecaga, sworn on 23<sup>rd</sup> January 2026.
2. The 1<sup>st</sup> Defendant (“the Bank”) opposes the application through the replying affidavit of its Manager, Debt Recovery Unit, Lilian Wanjiru Murimi, sworn on 13<sup>th</sup> June 2025. The application was canvassed by way of written submissions which are on record and which together with the pleadings I have considered and I will be making relevant references to in my analysis and determination below.

**Analysis and determination**

3. As submitted by the parties, the main issue for determination is whether the court ought to grant the injunctive order sought by the Plaintiff. They agree that for the Plaintiff to obtain the injunction, it



must demonstrate that it has a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in its favour (See *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358). It is also correct as per their submissions that in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR), the Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. This means that if the applicant does not establish a prima facie case, then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.

4. As to what constitutes a prima facie case, the parties are also spot on to submit that the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) explained that 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 to call for an explanation or rebuttal from the latter.” The Plaintiff’s position, as set out in its pleadings is that it is the registered owner of the suit property which it uses as its registered office. The Bank advanced the 2<sup>nd</sup> Defendant a loan of Kshs.325,000,000.00/= to which the Plaintiff as a guarantor, offered the suit property as security for the facility. The loan was also secured by a Debenture over all the assets of the 2<sup>nd</sup> Defendant which Debenture allows the Bank, in case of default, to appoint administrators to take over the company and its assets to recover the loan.
5. The Plaintiff admits that the 2<sup>nd</sup> Defendant defaulted on repayment of the loan and thereafter, the Bank, using its powers under the Debenture, appointed joint administrators over the 2<sup>nd</sup> Defendant on 13<sup>th</sup> May 2024. The Plaintiff contends that these administrators are managing the 2<sup>nd</sup> Defendant and its assets to recover the outstanding loan but that despite this ongoing administration process, the Bank has now moved to sell the suit property through public auction. The Plaintiff argues that the Bank is running two recovery processes for the same loan simultaneously and claims that the loan may have already been fully or partially recovered through the administration of the 2<sup>nd</sup> Defendant’s assets and that it will be prejudicial to sell the suit property before the administration is complete and accounts are taken to determine the actual amount still outstanding.
6. The Plaintiff accuses the Bank of failing to conduct a forced sale valuation as required by section 97(2) of the [Land Act](#) which risks an under sale of the suit property, that apart from a 45-day redemption notice, the Bank did not serve all the other statutory notices required by law before exercising its power of sale and that the intended sale violates section 560(1)(a) of the [Insolvency Act](#), which requires the court’s or the administrator’s approval to enforce security against a company under administration. The Plaintiff states that the Bank did not obtain this consent.
7. The Plaintiff avers that the suit property houses its registered office and entire business operations and that a sale would force the immediate closure of the company, causing irreparable loss and damage. For these reasons, the Plaintiff seeks the injunction pending the hearing and determination of the suit arguing that it demonstrated a prima facie case and that the balance of convenience favors stopping the sale to preserve the suit property.
8. In response, the Bank depones that the 2<sup>nd</sup> Defendant has been in “perennial default” and that the loan has been in arrears for over 800 days with the last payment made was a meager Kshs.50,000.00/= on 17<sup>th</sup> October 2024 and that as of 23<sup>rd</sup> April 2025, the outstanding amount was Kshs.240,887,847.28/=.
9. The Bank admits it appointed administrators over the 2<sup>nd</sup> Defendant on 13<sup>th</sup> May 2024, however, the Bank states that this argument is now irrelevant because the appointment of the Administrators was set aside by the Court. Furthermore, the Bank clarifies that the administrators only have power over



- the 2<sup>nd</sup> Defendant's assets and that the suit property belongs to the Plaintiff and is secured by a separate, distinct charge and the Administrators have no jurisdiction over it.
10. While the Plaintiff claims the Bank ignored settlement proposals including selling land in Migaa and Kisumu, the Bank states these were never credible as the alleged sales never materialized, and the 2<sup>nd</sup> Defendant failed to provide any proof of buyers or sale agreements. The Bank also contends that it followed due process before advertising the suit property for sale including issuing and serving a 14-day Demand Notice in May 2023, issuing and serving the 90-day Statutory Notice on 15<sup>th</sup> April 2024 via email to f@homeafrica.com and others and by registered post on 16<sup>th</sup> April 2024 and issuing and serving a 40-day Notification of Sale on 31<sup>st</sup> July 2024 via email and registered post on 7<sup>th</sup> August 2024.
  11. The Bank further claims that a forced sale valuation was conducted by a professional valuer on 4<sup>th</sup> October 2024 contrary to the Plaintiff's claim and that a 45-day Redemption Notice was served by auctioneers on 24<sup>th</sup> October 2024. The Bank argues there is no legal bar to exercising its rights under both the Debenture as against the 2<sup>nd</sup> Defendant as the borrower and the Third-Party Charge as against the Plaintiff as chargor and guarantor simultaneously, as they are separate contracts. It states that once a property is offered as security, it becomes a commodity for sale, and any loss can be compensated by damages and it accuses the Plaintiff of material non-disclosure and lying to the court, making it undeserving of an equitable remedy like an injunction.
  12. I have gone through the parties' pleadings and submissions. Whereas the Plaintiff states that the Bank cannot proceed with appointment of administrators under the Debenture and sell the suit property under the Charge, I am in agreement with the Bank that this court has always stated that a debenture and a charge provide for remedies that are different and distinct from each other and that a secured creditor like the Bank is entitled to exercise its statutory power of sale without being subject to insolvency proceedings against the borrower, in this case the 2<sup>nd</sup> Defendant (see *East African Cables PLC v Equity Bank (Kenya) Limited* [2024] KEHC 14009 (KLR))
  13. The Bank's power to sell the suit property is independent of the insolvency process and even if the Plaintiff is correct that the administration is still ongoing by way of newly appointed receivers, the law allows the Bank to pursue its remedy against the Plaintiff's suit property simultaneously. The Plaintiff's claim that remedies must be sequential rather than simultaneous is not supported by statute or case law which affirms the rights of a secured creditor.
  14. The Plaintiff also suggests that the loan may have been recovered through the administration process and that what remains is reconciliation and determination of the shortfall. However, I find this to be speculative and even if the same was true, it is now settled that a court cannot grant an injunction solely on the ground that there is a dispute as to the amount due under an agreement (see *J. L. Lavuna And Others v Civil Servants Housing Co. Ltd. & Savings And Loan Kenya Ltd* [1995] KECA 111 (KLR)). In any case, the Bank has provided a specific outstanding figure of just over Kshs 240 million and detailed the history of default. The Plaintiff has not provided evidence that the debt has been cleared or substantially reduced by the administrators and a vague assertion of possibility is insufficient to establish an infringement of a right.
  15. On compliance with issuing and serving Statutory Notices, the Plaintiff initially claimed statutory notices were not served. It is now settled that once a chargor makes such a claim, the onus is on the chargee to disprove the same by way of evidence and that a certificate of postage is prima facie proof that the statutory notices were served and received (see *Nyangilo Ochieng & another v Fanuel B. Ochieng & 2 others* [1996] KECA 205 (KLR)). The Bank provided detailed evidence of email copies and certificates of postage for the 90-day statutory notice, the 40-day notification of sale, and the 45-day redemption notice. The Plaintiff's supplementary affidavit does not specifically rebut this evidence of



service but pivots back to the administration argument. On the balance of probabilities, the Bank has demonstrated procedural compliance, negating the Plaintiff's claim that its rights were infringed by a lack of notice.

16. On the valuation of the suit property, the Plaintiff claimed the sale was irregular due to a lack of a forced sale valuation and that the loss of its registered office would be irreparable. The Bank directly rebutted the valuation claim by providing a forced sale valuation report dated 4<sup>th</sup> October 2024. The Plaintiff has not challenged the validity of this specific report and therefore, the allegation of irregularity on this ground is effectively disproven. On the apprehension that the suit property might be sold at an under value, any loss resulting from such a sale is finite and ascertainable and is awardable to the Plaintiff after trial and it has not been stated that the Bank is incapable of paying the same. Therefore, even if I am to assume that the suit property has been undervalued, the same does not outrightly entitle the Plaintiff to an injunction (see *Palmy Company Limited v Consolidated Bank of Kenya Limited* [2014] KEHC 4811 (KLR)).
17. Further, even though the suit property is the Plaintiff's registered office, there is no property, however sentimental or peculiar, that is incapable of being valued and damages awarded for it (see *Maina & another v Equity Bank Limited & 2 others* [2023] KEHC 23538 (KLR)). I am in agreement with the Bank's submission that once a property had been offered as security, it becomes a commodity of sale in the event of default. While this might be inconvenient for the Plaintiff, it does not elevate the loss to "irreparable" in a legal sense, as its value can be ascertained and compensated by damages.
18. I think I have said enough to conclude that the Plaintiff has failed to demonstrate that its right to the suit property has been apparently infringed or that it has a prima facie case with a chance of success. The Bank, as a secured creditor, has a statutory and contractual right to realize its security upon default either through the Debenture or the charge which are distinct and separate agreements that can be enforced simultaneously. The Bank has demonstrated, with evidence, that it substantially complied with the procedural requirements for exercising the power of sale by issuing and serving the requisite notices and conducting a pre-sale valuation of the suit property. The upshot is that following the dicta in *Nguruman* (Supra), the Plaintiff's quest for an injunction comes to an end at this point

### **Conclusion and Disposition**

19. The Plaintiff's application dated 16<sup>th</sup> January 2025 now stands dismissed with costs and the interim orders in place are discharged forthwith.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH 2026**

.....

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

N/A for the Plaintiff.

Ms. Chege holding brief for Ms. Mutisya for the Respondent/1<sup>st</sup> Defendant.

Ms. Some holding brief for Mr. Owino for the 2<sup>nd</sup> Respondent.

Amos - Court Assistant

