



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**HCCOMM NO. E011 OF 2025**

**EMMANUEL NZOLE MUTISYA -----  
PLAINTIFF/APPLICANT**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA  
LIMITED -----1<sup>ST</sup> DEFENDANT/  
RESPONDENT  
JOGEDAH AUCTIONEERING  
SERVICE-----2<sup>ND</sup>  
DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff brings a Notice of Motion Application dated 9<sup>th</sup> July 2025 for reliefs as herein below;-

1. **Spent.**
2. **Spent.**
3. **THAT pending the hearing and determination of this suit the Honourable Court be pleased to issue a temporary order of injunction restraining the Respondents from attaching, proclaiming, selling,**

**disposing of or in any other way interfering with a parcel of land known as Njoro/Ngata Block 1/4268 (New Kiambu) (" the suit property" ) owned by the Applicant.**

**4. An order does issue compelling the Respondents to furnish the Applicant with a copy of the Valuation report prepared over the suit property.**

**5. That a further does issue compelling the 1<sup>st</sup> Respondent to furnish the Applicant the actual loan account statement and updated loan settlement schedule within 7 days.**

**6. That another order does issue compelling the 1<sup>st</sup> Respondent to supply the Applicant with the Loan Account Statement and Loan Resettlement Schedule for working capital loan advanced to Prime Mattress Traders.**

**7. THAT costs of this Application be in the Cause.**

2. The Applicant swore an affidavit in Support of the Application. He avers that he is the registered owner of the suit property he charged to the 1<sup>st</sup> Respondent to secure a mortgage facility in the sum of Kshs.

9,450,000/=. He duly serviced the loan for almost 10 years after which he faced financial difficulties occasioned by a harsh economic environment.

3. The Applicant further avers that in May 2025 the 1<sup>st</sup> Respondent issued a 90-day statutory notice of intention to exercise its statutory power of sale of the suit property to realize its security. Before lapse of the notice period he was served with a Notification of Sale of the suit property dated 15<sup>th</sup> May 2025 by the 2<sup>nd</sup> Respondent as instructed by the 1<sup>st</sup> Respondent. The Notice indicated that the suit property would be sold by public auction on 16<sup>th</sup> July 2025. Again, before lapse of this notice, the 2<sup>nd</sup> Respondent issued a 45-days redemption notice also dated 15<sup>th</sup> May 2025.

4. According to the Applicant, the 2<sup>nd</sup> Respondent thereafter advertised the suit property for public auction on 16<sup>th</sup> July 2025. He contends that purported valuation of the suit property in the sums of Kshs. 10,000,000/= and 8,250,000/= in open

market and forced sale values respectively are significantly below the true and fair market value thereof.

5. On advice of his Counsel, the Applicant therefore contends *inter alia* that the Respondents failed to comply with the Provisions of **Sections 90(1), 90(2) and 96 of the Land Act** thereby invalidating their right of sale of the suit property.

6. The 1<sup>st</sup> Respondent's Legal Manager (Florence Njuguna) conveyed her employer's opposition to the Application *vide* her affidavit purportedly sworn on 28<sup>th</sup> July 2025 in reply. She avers that the Applicant is in default of the loan facility and the debt stood at Kshs. 16,604,229.57 as at 21<sup>st</sup> July 2025. In light of the default, the Applicant is said to have been served with all the requisite statutory notices of sale of the suit property *to wit*; 90-day notice dated 8<sup>th</sup> May 2024 and 45-day redemption notice dated 15<sup>th</sup> May 2025. The Applicant had allegedly failed to regularize the default even after restructuring of the loan at his

request. Owing to the 1<sup>st</sup> Respondent's internal administrative oversight, however, a fresh 90-day notice was inadvertently re-issued on 9<sup>th</sup> April 2025. According to the 1<sup>st</sup> Respondent, the second notice was not intended to negate or invalidate the earlier notices and neither does it affect the fact that the Applicant lawfully remains indebted to them in respect of two consolidated loan accounts.

7. The Respondent proposed in the circumstances that the second 90-day notice be admitted and they be allowed to subsequently re-issue the 40-days and 45-days notices upon lapse of the 90-day notice in the event the Applicant fails to make good the debt.

8. The 1<sup>st</sup> Respondent's witness further deposes that contrary to the Applicant's claim the suit property was properly valued, pointing out that the Applicant has not exhibited an independent valuation report in support of the contention of under valuation.

9. Learned Counsel for the parties filed Written Submissions which I have read through against the rival affidavit evidence and the entire record.

10. In **Showind Industries vs Guardian Bank Limited & Another [2002] 1 EA** among other decisions, it has been observed that temporary injunction pending trial is granted very sparingly, and only in exceptional circumstances such as where the Applicant's case is very strong and straight forward. As an equitable remedy, injunction may be denied where there is misconduct by the Applicant or his equity has been defeated by *laches*.

11. In **Mohamed Khalid Khashoggi vs Equity Bank Limited [2013]** it was held that disputed accounts and interest are not a ground for grant of injunction. The same opinion was expressed *inter alia* in **Habib Bank Ag. Vs POPFNK LTD, Civil Appeal No. 147 of 1989)** .

12. It is also the law that irreparable loss may not result to a borrower as any damages were foreseeable

owing to voluntary charging of property to the lender  
( see **Wanjohi vs Equity Bank Building Society Limited & 2 Others (2006) eKLR**).

13. Determination of injunction applications including mandatory, prohibitory and permanent injunctions were long settled in the often quoted case of **Giella vs Cassman Brown & Company supra** cited in the 1<sup>st</sup> Defendant's submissions. The principles are;

**"Firstly, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."**

14. Case law in **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) eKLR** explains a *prima facie* case in civil cases as;

**"A case which on the material presented, the court or tribunal properly directing itself will conclude that there exists a right**

**which had apparently been infringed by the opposite party as to call for explanation or rebuttal from the latter.”**

15. The three limbs above are required to be surmounted sequentially (see **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**). This means that the Applicant has to satisfy each of the three elements to obtain injunction orders.

16. A *Prima facie* case is established since the statutory notices were admittedly not properly served. The current extent of indebtedness is not also quite known since the last 90-day statutory notice, admitted to be erroneous, was sent on 9<sup>th</sup> April 2024. Valuation of the suit property cannot, however, be impugned as the Applicant has not tendered an independent expert report discrediting the report exhibited by the 1<sup>st</sup> Respondent.

17. The Applicant may suffer irreparable loss for violation of the law in sale of the charged property. He may not be compensated in damages for the violation if he eventually succeeds after trial.

18. Although the Applicant admits default, the 1<sup>st</sup> Respondent cannot lawfully exercise its statutory power of sale on the basis of the faulty notices of sale. The court nevertheless appreciates that the 1<sup>st</sup> Respondent cannot be prevented from seeking to recover the debt owed to it.

19. The Application is allowed only to the extent that the 1<sup>st</sup> Respondent is prohibited from selling the suit property on the basis of the issued notices. If the indebtedness persists the 1<sup>st</sup> Respondent would have to issue fresh notices.

20. The costs of the Application shall be in the Cause.

**J. M. NANG'EA - JUDGE**

**Ruling delivered virtually this 16<sup>th</sup> day of March, 2026.**

**In the presence of:**

**Plaintiff's/Applicant's Advocate, Ms Mutua for Mr. Kio**

**1<sup>st</sup> Defendant/Respondent's Advocate, Mr. Muia for  
Mr. Laichena  
The Court Assistant ( Jeniffer).**

**J.M. NANG'EA - JUDGE.**

ORIGINAL