

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELCLC NO. E501 OF 2025

**GAMACHU CONSTRUCTION
COMPANY**

LIMITED

.....**PLAINTIFF/APPLICANT**

-VERSUS-

EQUILOG ENTERPRISES LIMITED.....1ST

DEFENDANT/RESPONDENT

MOHAMED BWIKA.....2ND

DEFENDANT/RESPONDENT

-AND-

**AGRICULTURAL FINANCE CORPORATIONINTERESTED
PARTY**

RULING

1. Before this court for determination is the notice of motion dated 3rd November, 2025 filed by the plaintiff/applicant and it is expressed to be brought under **Sections 1A, 1B, 3, 3A and 63(e)** of the **Civil Procedure Act**, and **Order 40 Rules 1 & 2**, and **Order 51 Rule 1** of the **Civil Procedure Rules** seeking the following orders:

1. Spent.

**2. That pending the hearing and determination of
this application the court do stay the**

implementation of the notice to cancel the sale dated 30th October, 2025.

- 3. That pending the hearing and determination of this application, the Officer Commanding Station (OCS), Nyayo Stadium Police Station, be and is hereby ordered to provide security to officers/agents of Equity Bank PLC to access the suit property known as LR No. 209/17237(I.R NO. 109723/1) eagle plains housing estate, mombasa road for purposes of carrying out a professional valuation.***
- 4. That a declaration be issued that the respondents are illegally occupying the suit property and therefore be evicted from the suit property known as LR No. 209/17237(I.R NO. 109723/1) eagle plains housing estate, mombasa road forthwith to allow the applicant as the lawful purchaser and owner take vacant possession.***
- 5. That costs of this application be borne by the defendants.***
- 6. That this honorable court be pleased to make such other or further orders to meet the ends of justice due to the nature of its urgency.***

2. The application is premised on the grounds on its face and further supported by the affidavit of Hussein Chudo, the director of the

plaintiff/applicant sworn on 1st October, 2025. He deposed that they filed an application under certificate of urgency on 1st October, 2025 and that the court orders issued on 4th October, 2025 certifying the matter not urgent and directed them to effect service upon the defendants/respondents for inter-partes hearing on 8th December, 2025.

3. The plaintiff/applicant deposed that shortly thereafter and upon effecting service of the pleadings together with the order, the interested party issued 7 days' notice intending to cancel the purchase price and retain the 10% deposit paid. Prior to this, sometime on or about 28th August, 2024, the plaintiff/applicant participated in a public auction staged by the interested party, where it lawfully purchased the suit property known as LR No. 209/17237(I.R No. 109723/1) Eagle Plains Housing Estate, Mombasa road which the defendants/respondents had defaulted to repay the loan facility.
4. The plaintiff/applicant deposed that it duly paid the deposit as a condition precedent, and that it was a term of the sale agreement between itself and the interested party that the balance of the purchase price shall be completed within 90 days. The

plaintiff/applicant entered into a loan agreement with Equity Bank for purposes of financing part of the purchase price, and that it was a precondition under clause 4.2 of the mortgage agreement that since the suit property would be the security, a professional valuation to establish the current market price would be conducted and disbursement would be completed thereafter.

5. However, the defendants/respondents who are the former owners of the suit property have unlawfully resisted and/or denied officers and agents of Equity Bank access to the suit property for purposes of carrying out a professional valuation, thereby frustrating its ability to obtain the requisite financing. Further, they applied for extension of time but were unable to complete owing to persistent obstructions.
6. The plaintiff/applicant deposed that it is now over a year since purchasing the suit property, but all efforts to get the defendants/respondents out of the suit property have been futile and, in some instances, they have encountered violent attacks. That unless this court intervenes as a matter of urgency, then the plaintiff/applicant stands to lose the loan facility offered by Equity Bank which facility requires reactivation after it has lapsed. That

as a matter of urgency, there is need to access the suit property, conduct a valuation that will facilitate the disbursement of the loan applied for and settle the outstanding debt with the interested party.

7. The interested party filed its replying affidavit sworn on 11th February, 2026 by John Kithinji. He deposed that the defendants/respondents applied for a loan facility with them but defaulted, prompting them to exercise their statutory power of sale. He also confirmed that on 28th August, 2024, the plaintiff/applicant participated in a public auction staged by the interested party where he lawfully purchased the suit property. The interested party reiterated that the plaintiff/applicant duly paid the 10% deposit as per the memorandum of sale, with the remainder of the purchase price to be paid within 90 days.
8. Further, it is imperative that the plaintiff/applicant be allowed as a matter of urgency to access the suit property, conduct a valuation that will facilitate the disbursement of the loan applied for.
9. The application was canvassed through written submissions. The plaintiff/applicant filed its written submissions dated 21st March,

2026. The defendants/respondents did not file their response to the instant application and neither did they file written submissions. Be that as it may, I have considered the application, the replying affidavit by the interested party and the written submissions filed by the plaintiff/applicant. The issue for determination is whether the application has merit.

10. The plaintiff/applicant seeks to be allowed to gain access to the suit property which he stated that he bought from the interested party through public auction on 28th August, 2024. In support thereof, the plaintiff/applicant relied on the authority in the case of **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2020] eKLR**, where the court emphasized that a prima facie case exists where there is clear violation of a right. The court held that:-

“A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. This court finds that though the plaintiffs have established that they are the proprietors of the suit property through transmission, it is arguable by the defendant that she has unregistered rights in the property being the widow to the deceased.”

11. Similarly, they also relied on the case of **Naftali Ruthi Kinyua v Patrick Thuita Gachure & Another [2021] eKLR**, where the court affirmed that a purchaser's equitable interest deserves protection where threatened. In the present case, the plaintiff/applicant has demonstrated through the annexures that he bought the suit property from the interested party on the 28th of August, 2024 as the highest bidder in a public auction, and duly paid the 10% deposit of the purchase price of Ksh.19,500,000/=, as confirmed through the interested party's letter dated 30th October, 2025.
12. By a letter of offer from Equity Bank Ltd dated 30th September, 2024 the plaintiff/applicant was granted a loan facility with the suit property being the security, but states that he has been unable to access the suit property due to the defendants/respondent's hostility.
13. In my view, the plaintiff/applicant has demonstrated a clear and unmistakable right to the suit property as it was held in the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR** where the Court of Appeal found that:-

“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.”

14. Even though this is not an application for injunction, the plaintiff/applicant has a right to access the suit property that he has purchased. However, prayer number 4 of the application, that a declaration be issued that the respondents are illegally occupying the suit property and therefore be evicted from the suit property is premature at this interlocutory stage when the suit is yet to be fully heard and determined, thus cannot be granted by the court.

15. From the above, this court finds merit in the notice of motion dated 3rd November, 2025, and the same partially succeeds in the following terms:-

- i. The Officer Commanding Station (OCS), Nyayo Stadium Police Station, is hereby ordered to provide security to officers/agents of Equity Bank PLC to access the suit property known as LR No. 209/17237(I.R NO. 109723/1) Eagle Plains Housing Estate, Mombasa Road for***

purposes of carrying out a professional valuation.

- ii. The plaintiff/ respondents is hereby directed to grant the plaintiff/ applicant vacant possession.***

- iii. The interested party is hereby directed to extend the notice to cancel the sale dated 30th October 2025 by twenty eight (28) days from the date of delivery of this ruling to allow for the valuation of the suit property and for the plaintiff/ applicant to pay the remainder of the purchase price within this period.***

- iv. The costs of this application to be in the cause.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 9TH DAY OF APRIL, 2026.**

**HON. MBOGO C.G.
JUDGE
09/04/2026.**

In the presence of:

Ms. Benson Arunga - Court assistant

Mr. Mabonga for the Plaintiff/Applicant

No appearance for the Defendant/Respondent

No appearance for the Interested Parties