

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**COMMERCIAL CASE NO. E012 OF 2025**

**BETWEEN**

**ST. ELIZABETH ACADEMY KAREN  
LIMITED.....APPLICANT**

**VERSUS**

**LOLC KENYA MICROFINANCE BANK PLC.....1<sup>ST</sup>  
RESPONDENT**

**WATTS AUCTIONEERS.....2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. In its Notice of Motion dated 12<sup>th</sup> June 2025, the applicant has invoked Articles 40, 50 and 159 of the Constitution, sections 1A, 1B and 63 (e) of the Civil Procedure Act, order 40, rules 1, 2 and 3 together with order 51, rule 1 of the Civil Procedure Rules seeking the following reliefs:

***1. ... Spent;***

***2. ... Spent;***

***3. That pending the hearing and determination of this suit, an interlocutory injunction does issue restraining the defendants/respondents, by themselves, their agents, servants or assigns from advertising, holding a public auction, selling, transferring or otherwise disposing of the suit***

***property known as Land Reference number MAVOKO TOWN BLOCK 3/1207 measuring 2.075Ha located at Kinanie area Machakos from auctioning or otherwise dealing with the suit property;***

***4. That the plaintiff/applicant be granted a reasonable timeline to redeem the suit property with due process of law;***

***5. That costs of this application be provided for.***

2. The application is supported by the grounds on its face and the supporting affidavit of Anne Munene, the applicant's director, sworn on 12<sup>th</sup> June 2025. The deponent averred that she is the registered proprietor of all that parcel of land namely MAVOKO TOWN BLOCK 3/1207 measuring 2.075HA, which was charged to the 1<sup>st</sup> respondent as security for financial facilities advanced to the applicant.
3. On 3<sup>rd</sup> June 2025, the 2<sup>nd</sup> respondent advertisement the suit property in the Daily Nation for public auction scheduled for 13<sup>th</sup> June 2025. The applicant contends, that process was flawed as the respondents failed to comply with sections 90 and 96 of the Land Act. It was further deposed that the property was grossly undervalued at Kshs. 5,000,000.00, far below its alleged market value of Kshs.60,000,000.00; contrary to section 97 of the Land Act. The applicant argued

that such undervaluation amounted to a throwaway price and would occasion irreparable harm.

4. The applicant maintained that it had acted in good faith and was willing to redeem the property upon being granted reasonable time by this court. It attributed its default to financially constrained on account of unforeseen economic hardships and produced letters dated 27<sup>th</sup> May 2025 and 11<sup>th</sup> June 2025, in which it sought to settle the sums outstanding.
5. The applicant accused the respondents of violating Articles 40 and 47 of the Constitution and expressed apprehension that it would suffer grave prejudice if the orders sought were not granted. It argued that, the balance of convenience titled in its favor and urged the court to allow the application, noting that it was filed timeously and it was in the interest of justice that it be granted as prayed.
6. The respondents opposed the application through a Replying Affidavit sworn by Anita Tobias, the 1<sup>st</sup> respondent's credit manager, on 13<sup>th</sup> August 2025. they confirmed that the applicant was granted a working capital loan facility of Kshs. 5,000,000.00 vide a letter of offer dated 24<sup>th</sup> December 2022. The loan was secured by a legal charge dated 7<sup>th</sup> January 2023 over L.R. No. Mavoko Town Block 3/1207 registered in the name of Anne Wanjiku Munene together with deeds of guarantee and indemnity dated 24<sup>th</sup> December 2024 executed by the applicant and its directors.

7. Under the terms of engagement, the facility was to be repaid in 12 monthly installments of Kshs. 516,666.67. The respondent deposed that the applicant defaulted on its obligations shortly after the funds were disbursed. On 28<sup>th</sup> March 2023, the applicant requested a loan restructure which was granted on 24<sup>th</sup> April 2023. Under the terms of engagement, the monthly installments were reduced to a sum of Kshs. 248,278.49 payable over a period of 30 months. Despite this concession, the applicant still failed to honor her obligations.
8. In the circumstances, the 1<sup>st</sup> respondent issued a statutory notice under section 90 (1) of the land Act on 11<sup>th</sup> August 2023 informing the applicant that it would exercise its statutory power of sale after the date of the notice. Since, the applicant failed to honor its obligations, the 1<sup>st</sup> respondent subsequently issued a notice of intention to sell pursuant to section 96 (2) of the Land Act dated 20<sup>th</sup> November 2023. The notice required the applicant to redeem the property within 40 days failing which the property would be sold to recover the debt.
9. Thereafter, the 1<sup>st</sup> respondent retained the services of a valuer to establish the forced sale value of the property in furtherance of a public auction. The valuation report indicated the market value of the property was Kshs.22,500,000.00 while the forced sale value stood at Kshs. 16,875,000.00. The 1<sup>st</sup> respondent therefore contended

- that the applicant's allegations that the property had been valued at Kshs.5,000,000.00 was misleading and inaccurate.
10. Following the valuation, the 1<sup>st</sup> respondent instructed the 2<sup>nd</sup> respondent to proceed with the public auction. In compliance with the Auctioneers Act, the 2<sup>nd</sup> respondent issued a 45-day redemption notice dated 5<sup>th</sup> January 2024. Upon its expiry, the auction was advertised in the Daily Nation on 23<sup>rd</sup> December 2024 scheduled for 14<sup>th</sup> March 2024 at 11:00 a.m. However, at the applicant's request, the auction was temporarily suspended to allow settlement of the outstanding loan.
  11. Subsequently, on 9<sup>th</sup> January 2025, a public auction was conducted at the 2<sup>nd</sup> respondent's offices. No bids were received that matched the forced sale value as the highest offer being Kshs.12,500,000.00. A second auction was therefore scheduled for 6<sup>th</sup> June 2025 and courtesy notices were issued to the applicant to redeem the property.
  12. In a letter dated 27<sup>th</sup> May 2025, the applicant expressly admitted its indebtedness to the 1<sup>st</sup> respondent and requested that the auction be held in abeyance to enable it clear the outstanding balance by 30<sup>th</sup> June 2025. However, the applicant failed to honor that commitment. The 1<sup>st</sup> respondent stated that as at 29<sup>th</sup> July 2025, the loan arrears stood at Kshs. 3,993,631.61. Together with interest, the total indebtedness was in the sum of Kshs. 4,705,569.77 which continues to earn interest as long it remains unpaid.

13. The 1<sup>st</sup> respondent maintained that had consistently acted in good faith and accommodated the applicant on several occasions yet the applicant continues to remain indebted to it. It argued that the application was premised on misleading and untrue grounds and that the applicant failed to demonstrate compliance with the parameters for injunctive relief.
14. On the balance of convenience, the 1<sup>st</sup> respondent contended that it tilted in its favor, as it was entitled to pursue lawful recovery to protect its financial exposure and mitigate risk. It therefore prayed that the application be dismissed with costs.
15. During the hearing of the application, neither the applicant nor its counsel was present. Learned counsel for the respondents, Miss Chepkoech appeared and relied on the response filed, urging this court to dismiss the application. This court has considered the application, the replying affidavit and the applicable law. The applicant seeks an order for injunction. The test for injunctive relief is well settled with the *locus classicus* case of **Giella vs. Cassman Brown** (1973) EA 358 as follows:

***“Firstly an applicant must establish a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer injury which will not be compensated in damages. Thirdly, if***

***the court is in doubt, it will decide the application on a balance of convenience.”***

16. On whether the applicant has established a *prima facie* case with probability of success, the principle is well settled. A *prima facie* case is one in which, on the material presented to the court, a tribunal properly directing itself would conclude that there exists a right apparently infringed by the opposite party, thereby calling for an explanation or rebuttal from the latter. [See **Mrao vs. First American Bank of Kenya Ltd & 2 others** ( 2003) eKLR].
17. In this case, the applicant expressly admitted its indebtedness to the respondent. This admission was confirmed through the applicant’s letter dated 27<sup>th</sup> May 2025 wherein it committed to settle the debt. The record further shows that the 1<sup>st</sup> respondent issued a statutory notice on 11<sup>th</sup> August 2023 under section 90(1) of the Land Act followed by a notice of intention to sell dated 20<sup>th</sup> November 2023 under section 96 (2) of the Land Act requiring redemption within 40days. These notices were duly served, yet the applicant failed to honor its obligations.
18. The 1<sup>st</sup> respondent thereafter engaged a professional valuer who established the market value of the property at Kshs.22,500,000.00 and the forced sale value stood at Kshs. 16,875,000.00. In compliance with the Auctioneers Act, a 45-day redemption notice was issued on 5<sup>th</sup> January 2024

followed by advertisement in the Daily Nation on 23<sup>rd</sup> December 2024 for an auction scheduled on 14<sup>th</sup> March 2024 at 11:00 a.m. At the applicant's request, the auction was temporarily suspended to allow settlement, but no payment was forthcoming.

19. A subsequent auction held, on 9<sup>th</sup> January 2025, at the 2<sup>nd</sup> respondent's offices attracted bids below the forced sale value, with the highest offer being Kshs.12,500,000.00, below the slated forced sale value. Thus, another auction was staged on 6<sup>th</sup> June 2025 and courtesy notices were issued to the applicant to redeem the property. Despite these accommodations, the applicant remained in default.
20. That was when the applicant served upon the 1<sup>st</sup> respondent a letter dated 27<sup>th</sup> May 2025 where the applicant admitted to being indebted to the 1<sup>st</sup> respondent; further requesting it to hold off any auction in order to clear the outstanding balance by 30<sup>th</sup> June 2025. However, the applicant reneged that commitment. As at 29<sup>th</sup> July 2025, the loan arrears Kshs.4,705,569.77 that continues to earn interest as long it remains unpaid.
21. From the above uncontroverted facts, it is clear that the applicant has been indebted to the 1<sup>st</sup> respondent for nearly three years without making concrete or sustain efforts to discharge its obligations. The debt is lawful, arising from a contract voluntarily entered into on its own volition. Furthermore, the applicant has not demonstrated good faith

or any infringement of its right by the respondent. Accordingly, I find that a *prima facie* case has not been established by the applicant.

22. On whether the applicant will suffer irreparable harm that cannot be compensated by an award of damages, I find that if the process is indeed flawed as alleged by the applicant, it can be compensated by way of damages. In any event, no reasons have been advanced by the applicant on this limb as to urge this court to consider the application in its favor.
23. Lastly, on the balance of convenience, since I the applicant has failed to meet the threshold on the first two limbs, this court need not consider it further. Accordingly, I find that the Notice of Motion dated 12<sup>th</sup> June 2025 is devoid of merit. It is dismissed with costs to the respondents.
24. It is so ordered.

Dated, signed and delivered at Machakos this 9<sup>th</sup> day of April  
2026.

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Applicant

.....Respondent

Selina Court Assistant

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