

injunction from advertising for sale, selling, auctioning, transferring and/or in any way interfering with the parcel of land known as NAKURU MUNICIPALITY BLOCK 27/281 pending the hearing and determination of this suit.

e) That, costs be provided for.

2. **Rose Watherero Gachegwa** is seeking a temporary injunction to stop the auction of her property, Nakuru Municipality Block 27/281, scheduled for December 5, 2025, due to her inability to repay a Ksh 10 million loan after becoming permanently disabled in April 2024. Despite paying for credit life insurance that should cover the loan, the insurer denied the claim, and she is asking the court to compel them to honor it, as the property is her sole source of income for medical expenses.
3. The Application is opposed by both respondents with the 2nd Respondent making an application (2nd Application) dated 11th February 2026 to be struck-off the proceedings for mis-joinder.
4. The 1st Application is opposed by the 1st Respondent, arguing that the debt is valid, the default is admitted, and they have followed the legal procedure to exercise their statutory power to sell the property.
5. The 1st Respondent focuses on debunking the Plaintiff's (Rose's) medical claims and shifting responsibility for the insurance claim to the 2nd Defendant (the Insurer).

6. The 1st Respondent argues that, due process was followed, including a Valuation (June 2025), Auctioneer Instructions (September 2025), and a Redemption Notice/Notification of Sale (Sept 30, 2025).
7. The 1st Respondent argues the Applicant's health issues pre-date the loan. Records show her condition started in 2014 and she had surgery in 2022—before the consolidated loan was taken. They argue her condition is not "permanent" because she is seeking further corrective surgery. They deny ever receiving or commissioning a formal medical assessment of her health.
8. The 1st Respondent confirms they deducted Credit Life Assurance premiums and sent them to the insurer (2nd Defendant) arguing that whether the insurance covers the loan is a matter between the Plaintiff and the Insurance Company, not the bank.
9. The 1st Respondent asserts its legal right to sell the property and quantifies the total debt Kshs 13,530,931.62 as of the date of filing urges the court to allow the auction to proceed, claiming the Plaintiff's medical excuse is legally invalid and that they have followed the Land Act, 2012 to the letter.
10. The 1st Respondent argue that, because all legal notices (90-day and 40-day) were issued and ignored, their statutory right to sell the property has "crystallized" (become absolute) and that once a property is used as collateral (charged) for a loan, it legally ceases to be a sentimental asset and becomes a commercial chattel or

"commodity for sale." Contending that, the Applicant will not suffer "irreparable loss" because any financial harm can be compensated by monetary damages later if the sale is found to be wrong. This is a common legal tactic to prevent a court from granting an injunction to stop an auction.

11. The 1st Respondent emphasizes that, by signing the loan agreement, the Plaintiff explicitly agreed and was aware that the property would be sold if the loan was not repaid and that there is no legal reason to stop the auction because the debt is undisputed, the procedure was followed, and the property is now just a financial security rather than a home.
12. The 2nd Respondent opposes the Application by filing an Application dated 11th February 2026 seeking to be struck off the proceedings. It denies any relationship with the Applicant or ever entering into any insurance policy cover with the 1st Respondent nor did it undertake to indemnify the Applicant upon the occurrence of any specific future event.
13. That the 2nd Respondent and Absa Life Assurance Kenya Limited are separate and distinct entities thus the 2nd Respondent cannot be held liable for acts or omissions of its subsidiary.
14. That the 1st Respondent's Insurance Credit Life policy is a matter between the 2nd Respondent and the 1st Respondent. The Applicant not being a party, is therefore not bound by the terms of the policy. It

argues that, there is no direct contract between them and the Applicant who has no legal basis (cause of action) to sue them.

15. That the suit is "misconceived" and "untenable" because they have no record or knowledge of the specific Life Assurance policy mentioned by the 1st Respondent (the Bank) and thus cannot be legally compelled to produce any documents related to it.
16. The 2nd Application is unopposed.
17. The onus was on the Applicant to enjoin the correct party providing for group life insurance cover for the facility.
18. The Applicant equally had a duty to demonstrate an existence of a dispute between the parties as to her permanent disability claim.
19. The Applicant's casual assertion that her disability claim was rejected is persuading as no evidence of the same has been laid.
20. The Applicant by signing the loan agreement, explicitly agreed and was aware that the property would be sold if the loan was not repaid and that there is no legal reason to stop the auction because the debt is undisputed and in arrears, the procedure invoking the statutory power of sale has been duly complied with.
21. This court finds no basis to stop the intended auction.
22. I am inclined to make the following final orders;

- i. The Notice of Motion dated 24th October 2025 is dismissed with costs to the Respondents.**
- ii. The Notice of Motion dated 11th February 2026 is Allowed with costs granted to the Applicants.**
- iii. The 2nd Defendant is hereby struck-off these proceedings for misjoinder of party.**

It is so Ordered.

**Signed, Dated and Delivered
at Nakuru on this 15th Day of April 2026.**

**Mohochi S. M.
JUDGE**