



REPUBLIC OF KENYA



**Jibco Kenya Limited v Gulf African Bank & another (Commercial Case E294 of 2025)
[2026] KEHC 4880 (KLR) (Commercial and Tax) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E294 OF 2025**

BK NJOROGE, J

APRIL 15, 2026

BETWEEN

JIBCO KENYA LIMITED PLAINTIFF

AND

GULF AFRICAN BANK 1ST DEFENDANT

GARAM INVESTMENT AUCTIONEERS 2ND DEFENDANT

RULING

1. This matter comes up for a Ruling in respect to two applications dated 25th April, 2025 and 2nd July, 2025.

Background Facts

2. Before the Court are two Applications to be determined together.
3. The 1st Application is the Notice of Motion dated 25th April 2025 by the Plaintiff seeking the following orders;
 - a. An Order of injunction do issue restraining the 1st and 2nd Defendant /Respondent, jointly and severally, their officers, agents, employees, functionaries or officials by whatever name called from selling, offering for sale and or conducting the auction slated for the 29th April 2025 or any other date or dealing in any way whatsoever with the property registered L.R No. 1/905 (I.R No. 35080), Rose Estate Kilimani Area, Nairobi City County pending the hearing and determination of this suit.
 - b. The 2nd Defendant be restrained from conducting the Sale by Public Auction on the 29th April 2025.



- c. The officer commanding police station at Kilimani to ensure compliance of the orders.
 - d. Costs of this application be provided for.
4. The Application is supported by the Affidavit of Shukri Mohamed Haji who states that the Plaintiff seek to stop a public auction scheduled for 29th April 2025. This is in respect of their property, L.R No. 1/905 (I.R No. 35080), Rose Estate, Kilimani, Nairobi City County, He contends that the intended sale is illegal and conducted contrary to the law and procedure. He depones that the 1st Defendant had advanced the Plaintiff a loan facility which it had been servicing. However, due to financial constraints and economic hardship, it fell into arrears amounting to Kshs. 102,570,683.20. This prompted the 1st Defendant to instruct the 2nd Defendant to advertise and auction the property.
 5. The Plaintiff submits that the intended auction is unlawful, unjustified. That it is in breach of the 1st Defendant's fiduciary and contractual duty of care, particularly for failure to comply with the mandatory provisions of the Land Act. It further contends that the process is arbitrary and tainted with fraud. It warns that unless restrained, the property may be transferred to third parties, causing them immense prejudice despite their request for restructuring of the loan facility.
 6. In response, the Respondent has filed the Replying Affidavit of Lawi Sato sworn on 7th May 2025. He states that pursuant to a Banking Facility Letter dated 13th April 2022, the 1st Respondent advanced the Applicant a loan facility totaling Kshs. 104,000,000.00. This loan was secured by an All-Asset Debenture, a First Legal Charge over L.R. No. 1/905 (I.R No. 35080), Rose Estate, Kilimani, Nairobi, and Personal Guarantees by the Applicant's Directors. The facility was later restructured through a Variation of Offer dated 5th May 2022. The Applicant acknowledged and voluntarily executed the security instruments and was to repay the loan over ten years. However, it defaulted on its repayment obligations, and as at 29th April 2025, it owed Kshs.114,236,908.79, prompting the Respondent to initiate recovery proceedings.
 7. Following the Applicant's continued default and the rejection of its restructuring request in August 2024, the Respondent issued the requisite statutory notices under Sections 90 and 96(2) of the Land Act, conducted a valuation, and issued the necessary Redemption Notice and Notification of Sale. The Respondent maintains that it has fully complied with all statutory requirements, that its statutory power of sale has lawfully arisen, and that the Applicant's application is a delaying tactic. It contends that any loss suffered by the Applicant is compensable by damages and urges the Court to dismiss the application with costs.
 8. Further to the above response, the Defendants also filed grounds of Opposition dated 29th April 2025 on the following grounds-;
 - i. The application is made after considerable delay. The Plaintiff has been aware of steps to sell the suit property since September 2024.
 - ii. The Debt owed to the 1st Defendant is admitted. The Plaintiff is in default of servicing the debt.
 - iii. The alleged illegality in the sale has not been particularized.
 - iv. A prima facie case has therefore not been made out.
 - v. Sale of the suit property cannot result in irreparable harm to the Plaintiff.
 - vi. The conduct of the Plaintiff disentitles it from the grant of the orders sought.



9. The 2nd Application is a Notice of Motion dated 2nd July 2025 by the Defendants who seek the following orders;
- a. Pending the hearing and determination of this application and the Plaintiff's application dated 25th April 2025, the Plaintiff is hereby ordered to honour its financial obligation by paying Kshs. 1,805,146 on or before the 20th of every month, failing which the injunction granted on 29th April 2025 shall stand discharged.
 - b. Pending the hearing and determination of this application and the Plaintiff's application dated 25th April 2025, the Plaintiff is hereby ordered to pay the outstanding arrears of Kes.16,659,593.18 within 14 days, failing which the injunction granted on 29th April 2025 shall stand discharged.
 - c. The Court to discharge the temporary injunction granted on 29th April 2025.
 - d. In the alternative, and without prejudice to prayer 4, the aforesaid injunction be varied to require immediate payment of the entire admitted outstanding debt within 14 days failing which the injunction shall stand discharged.
 - e. The costs of this application be borne by the Plaintiff.
 - f. The Court to grant any other relief that it may deem just and fit.
10. This Application is supported by the Affidavit of Lawi Sato a Legal Officer of the 1st Defendant/ Applicant herein. He depones that on 29th April 2025, the Court granted a temporary injunction restraining the Defendants from selling LR No. 1/905 (I.R No. 35080), Rose Avenue, Kilimani, Nairobi. This was on the condition that the Plaintiff pays Kshs.5 million within seven days. The order was extended on 12th May 2025, with directions that the Plaintiff proposes a settlement plan for the admitted debt. The outstanding amount stands at Kshs.127,539,312.03 as of 2nd July 2025, which the Plaintiff has acknowledged. Despite being obligated to make monthly payments of KShs. 1,805,146.00, the Plaintiff has not made any payments since 30th July 2024, save for the Kshs.5 million ordered by the Court. That efforts to secure meaningful settlement proposals have not progressed.
11. In addition, the Defendants contend that the continued injunction has caused significant prejudice, as it restrains the exercise of its statutory power of sale, which is the only viable means of recovering the substantial debt. The property's market value is Kshs. 125 million and its forced sale value is Kshs.93.75 million, both insufficient to cover the outstanding debt. The Defendants submit that the Plaintiff is abusing the Court process to evade its admitted financial obligations and frustrate legitimate recovery efforts. It therefore seeks the immediate and unconditional discharge of the injunction to prevent further financial harm.

Issues for determination

12. The Court has considered the two Applications, the Response, the Grounds of Opposition, the written submissions, as well as the oral highlights by Counsel for the parties. The Court frames the following issues for determination
- a. Whether an order of injunction should issue against the Defendants.
 - b. Whether the injunction order granted on 29th April 2025 ought to be discharged.



Analysis

13. It is undisputed that vide the Banking Facility Letter dated 13th April 2022, the 1st Defendant advanced a loan facility to the Plaintiff of a total aggregate sum of Kshs. 104,000,000.00. Further, and in line with the express terms and conditions of the Banking Facility Letter, the facilities thus advanced were secured by inter alia: all Asset Debenture of Kshs. 100,000,000.00; First ranking Legal Charge dated 16th February 2023 securing Kes. 104,000,000.00 over Land Reference Number 1/905 (I.R No.35080), Rose Estate Kilimani Area, Nairobi City County, registered in the name of the Plaintiff; and Personal Guarantees by the Directors of the Plaintiff for Kshs. 104,000,000.00.
14. The Plaintiff has now approached the Court seeking an order of injunction to restrain the Defendants from exercising the 1st Defendant's statutory power of sale or dealing in any way whatsoever with the property registered L.R NO. 1/905 (I.R NO. 35080), Rose Estate, Kilimani Area, Nairobi City County.

a. Whether an order of injunction should issue against the Defendants.

15. The issue of temporary injunctions is well settled and set out in the judicial decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions by Kenyan Courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that:

“In an interlocutory injunction application, the Applicant has to satisfy the triple requirements that is to,

- a) establishes his case only at a prima facie level,
- b) demonstrates irreparable injury if a temporary injunction is not granted and,
- c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.”

16. In summary, the Plaintiff ought to, first, establish a prima facie case. In *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) eKLR the Court of Appeal gave a determination on a prima facie case. The Court stated that:

“...in civil cases, it is a case in which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

17. It is the Plaintiff's case that the 1st Defendant instructed the 2nd Defendant to advertise and proceed with the sale of the suit property by public auction scheduled for 29th April 2025. That the 1st Defendant has breached its fiduciary and contractual duty of care by failing to comply with the mandatory provisions of the *Land Act*. That the instructions issued for the auction were unjustified, arbitrary, and tainted by fraud. Consequently, the Plaintiff maintains that the intended auction is illegal, irregular, and void, and urges that it be halted immediately.



18. Has the Plaintiff established a prima facie case? The Court finds that the Plaintiff has not established a prima facie case. This is because the Plaintiff merely makes a blanket assertion that the intended auction is illegal. This is without substantiating that claim with specific grounds demonstrating the alleged illegality. Additionally, although the Plaintiff accuses the Defendants of failing to comply with the mandatory provisions of the *Land Act*, it does not identify the breach or explain how such non-compliance occurred.
19. Moreover, it is noteworthy that the Plaintiff acknowledged and admitted its indebtedness to the 1st Defendant in its Supporting Affidavit at Paragraph 6;

“That due to financial constraints and economic hardships, the plaintiff was not able to service the loan and fell into default damages of Kshs. 102,570,683.20”
20. It is therefore the Court’s considered view that the Plaintiff having failed to establish a prima facie case, there no need to consider the other grounds for the grant of an order of injunction.

b. Whether the injunction order granted on 29th April 2025 ought to be discharged.

21. In the same breath having found that the Plaintiff is undeserving of injunctive orders, the same will stand discharged. It follows that the orders sought by the Defendants in their Notice of Motion dated 2nd July 2025 are now moot. That application marked as spent as it no longer serves any useful purpose, the injunction having been discharged. There will be no orders as to costs.
22. In light of the above, the orders sought in the Plaintiff’s application dated 25th April, 2025 are hereby denied, and the interim injunction granted on 29th April 2025 stands discharged.
23. As to costs, the same lie at the discretion of this Court and ordinarily follow the event. The Defendants/ Respondents are awarded the costs of the Motion.

Determination

24. The Plaintiff’s Application by way of a Notice of Motion dated 25th April, 2025 is hereby dismissed in its entirety for lack of Merits. The injunctive orders granted on 29th April, 2025 are hereby discharged.
25. The costs of the Motion are awarded to the Defendants/Respondents.
26. The Defendants’ application by way of a Notice of Motion dated 2nd July, 2025 is held to be moot and to have been spent. There will be no orders as to costs.
27. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 15TH DAY OF APRIL, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Kimani holding brief for Mr. AbdiRazak Plaintiff/Applicant.

Mr. Ogunde for the Defendants/Respondents.

Mr. John Paul – Court Assistant.

