



Aslam v Aslam aka Anne Wanjiru Wangui & 3 others (Civil Case E006 of 2024) [2026] KEHC 5914 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5914 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL CASE E006 OF 2024
CW MEOLI, J
APRIL 30, 2026**

BETWEEN

NAJIM ASLAM PLAINTIFF

AND

ANISA ASLAM AKA ANNE WANJIRU WANGUI 1ST DEFENDANT

SUMAR MOHAMMED SIDIK 2ND DEFENDANT

RONGAI TILES & SANITARY WARE LTD 3RD DEFENDANT

I & M BANK LIMITED 4TH DEFENDANT

RULING

1. Najim Aslam, the Plaintiff herein (hereafter the Applicant) by his plaint dated 20.03.2024 sued the Defendants herein, namely, Anisa Aslam aka Anne Wanjiru Wangui (hereafter the 1st Respondent), Sumar Mohammed Sidik (hereafter the 2nd Respondent), Rongai Tiles & Sanitary Ware Ltd. (hereafter the 3rd Respondent) and I & M Bank Limited (hereafter the 4th Respondent) seeking inter alia declaratory orders and a permanent injunction, specifically against the 4th Respondent, to restrain them from “selling under the statutory power of sale”, the eight landed suit properties which he averred belonged to the estate of his late father Aslam Sumar Mohamed (hereafter the deceased), who died on 4th March 2020 deceased. He alleged fraud and illegality against the Respondents, in connection with succession proceedings in respect of the estate of the deceased, and in transactions relating to the said estate assets (the suit properties), subsequently.
2. The Applicant contemporaneously filed the motion dated 20.3.2024 which invokes Article 40 of *the Constitution*, Section 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* (CPA), Order 40 Rules (1) & (2) of the Civil Procedure Rules (CPR), seeking that:



- a. “...pending the hearing and determination of the suit, the Honourable Court be pleased to issue an injunction directed at the 4th Respondent, its agents, proxies or any person acting for or in its name from selling, auctioning, or otherwise putting to market the sale of the properties known as:-
- i. Kajiado/Mailua/3668
 - ii. Kajiado/Ildamat/9165
 - iii. KJD/Kitengela/44136
 - iv. KJD/Kitengela/44137
 - v. KJD/Kitengela/44138
 - vi. Ngong/Ngong/53022
 - vii. Kajiado/Kitengela/88801
 - viii. Kajiado/Kitengela/88802
- (Hereinafter referred to as the suit properties)
- b. “...pending the hearing and determination of the suit, the honourable court be pleased to issue an injunction suspending and/or staying the implementation of the Proclamation Notice dated 5th February, 2024 by stopping the sale of the subject properties named in the said Notices, which sale is due on 16th April, 2024”(sic).
3. The motion was based on the grounds on its face, as amplified in the Applicant’s supporting affidavit of even date. Therein, he deposed that he is the first-born son of the deceased who died possessed of a substantial estate, including the suit properties, and while the deponent was residing in the United States of America and therefore not involved in the succession process.
4. He swore that in October 2023, he learned through his mother (the 1st Respondent), that succession proceedings had already been conducted and that the 1st and 2nd Respondents had been appointed administrators of the estate of the deceased and contended that as an adult beneficiary, he was neither informed nor involved in the succession process; that he further discovered that all the deceased’s properties had allegedly been registered in the name of the 1st Respondent following confirmation of grant issued on 10th February 2021; and that neither he nor his adult siblings consented to the appointment of the administrators or the confirmation of the grant, and hence the entire process unlawful.
5. The deponent contended that the succession process was fundamentally defective and illegal for want of consent thereto by adult beneficiaries, exclusion of rightful heirs, and irregular prioritization of the 2nd Respondent (the deponent’s grandfather) over the children of the deceased. He further asserted that documents purporting to indicate consent to the mode of distribution contained forged signatures, as neither he nor his siblings, including one minor, had executed the documents. Therefore he asserted that the initial and confirmed grant issued in respect of the estate of the deceased were fraudulently obtained and liable for revocation.
6. Lamenting that the confirmed grant conferred the absolute ownership, rather than a life interest of the estate assets to the 1st Respondent and, in part, to the 3rd Respondent, without any provision being made for the beneficiaries, he described the actions illegal, irregular, and fraudulent.



7. Further, he swore that the said beneficiaries under the grant had subsequently transferred and charged the estate assets to the 4th Respondent without the knowledge or consent of the beneficiaries. Setting out the details of the transactions above, the deponent described them as unlawful and unauthorised by other beneficiaries. He accused the 4th Respondent of proceeding to transact with the 1st Respondent despite being aware of the irregularities in the succession process.
8. The deponent also asserted that the deceased had only acted as a guarantor for a facility advanced to the 3rd Respondent and that his liability, if any, was limited to the guaranteed sum; that at the time of his father's death, there had been no default on the facility and no demand had been made, and moreover asserted that any arising liability ought to have been covered by insurance. Hence disputed the validity and extent of the 4th Respondent's claim, particularly the amount demanded and the basis of the charge.
9. Stating that the 4th Respondent had issued statutory notices and instructed auctioneers to sell the charged properties, he contested the proposed sale as unlawful, being founded on an illegal charge arising from a fraudulent succession process. Thus, transactions between the 1st Respondent and the 4th Respondent were null and void. The deponent further averred that he had filed summons for revocation of the impugned grant and that the outcome of those proceedings would directly impact upon the validity of the charge and the intended sale. Hence it was necessary that the impending sale be stayed pending the determination of the grant revocation proceedings.
10. Finally, he averred that unless the orders sought were granted, the estate of the deceased and the beneficiaries would suffer irreparable loss, as the properties may be sold and the substratum of the dispute destroyed. Contending here that the Respondents will not suffer prejudice if the orders were granted, and that it is in the interest of justice to preserve the estate and prevent the perpetuation of illegality.
11. Despite being served and represented by counsel, the 1st Respondent did not file a response to the motion. The 2nd Respondent's replying affidavit is dated 15th October, 2025, wherein the deponent Sumar Mohammed Sidik described himself as a director of the 3rd Respondent. On 22.10.2025, counsel for the 3rd Respondent stated that the said Respondent would be relying on the affidavit of the 2nd Respondent.
12. The 2nd Respondent's replying affidavit is to the following effect. Prior to the death of the deceased, the 3rd Respondent enjoyed several financial facilities with the 4th Respondent, including one for the sum of Kes. 22,000,000/- which was secured by a charge created over certain properties, as well as a guarantee in the sum of Kes. 35,000,000/- issued by the 4th Respondent in favour of National Cement Company Limited, a trading partner of the 3rd Respondent which was unsecured by a charge. That shortly after the deceased's death, the bank paid out the guaranteed sum to National Cement Company Limited without following due process and proceeded to demand that the said sums be secured by way of a charge.
13. According to the deponent, the company faced financial distress following the death of the deceased, a principal director, which situation the 4th Respondent allegedly exploited by coercing the 3rd Respondent through the 1st and 2nd Respondents to amalgamate and secure existing facilities in the sum of Kes.67,500,000/- by creating charges or a charge over the deceased's properties which are the suit properties herein. He contended that these charges were irregular, particularly because they were created after the deceased's death and included the guaranteed sum of Kes.35,000,000/- which had already been released to third parties by the 4th Respondent.



14. The deponent complained that despite the 3rd Respondent complying with the bank's demand for security, the bank failed to advance the promised additional working capital to the 3rd Respondent leading to the collapse of the 3rd Respondent's business. Denying any involvement by the 3rd Respondent in fraud, he blamed the 4th Respondent for allegedly arm-twisting the parties and failing to act in good faith.
15. He added that the actual liability of the 3rd Respondent secured by a charge executed by the deceased at the time of his death was approximately Kes. 22,000,000/-, and had been largely repaid, while additional liabilities were improperly imposed after his death; that despite the foregoing, the bank has since moved to realize the securities by selling the suit properties which were charged, which conduct is fraudulent and in bad faith. He therefore supported the motion seeking to stop the intended sale, which he claims arises from irregular and unlawful transactions initiated by the 4th Respondent.
16. On its part, the 4th Respondent relied on the replying affidavit sworn by Dickson Kiprop Chemjor, described as a Senior Associate in the 4th Respondent's Debt Recovery Department, in opposing the motion. He asserted therein that the charges over the suit properties are lawful, valid, and enforceable. And in outlining the long-standing banking relationship between the deceased, the 3rd Respondent company, and the 4th Respondent since 2013, the deponent asserted that the deceased and the 3rd Respondent enjoyed various financial facilities including home loans, term loans, overdrafts, and letters of guarantee from the bank. He asserted that the facilities were secured through multiple legal charges, all valid, created over the suit properties during the lifetime of the deceased.
17. According to the deponent, as of the time of the deceased's death, the suit properties had already been encumbered by charges in favour of the bank. Consequently, the deponent contended that the Applicant's consent was not required for the creation of those charges and that after the deceased's death, a grant of letters of administration was issued and confirmed, resulting in the transfer of the properties to the 1st Respondent as a beneficiary. Asserting that while the bank was not involved in the succession proceedings, it was entitled to rely on the confirmed grant in dealing with the properties.
18. He further deposed that following the confirmation of grant, the administrators engaged with the bank to regularize and perfect the securities by facilitating the transfer of the charged properties into the name of the 1st Respondent, but subject to then existing charges, and the subsequent creation of additional securities in favour of the bank to secure further facilities extended to the 3rd Respondent. He recalled that in 2021 and 2022, further loan facilities were advanced to the 3rd Respondent including a consolidated term loan of Kes. 67,500,000/-, secured by charges over the same suit properties that had, pursuant to the confirmed grant, been registered in the 1st Respondent's name.
19. Denying that the 4th Respondent was involved in any illegality or fraud, he maintained that all facilities were properly granted, securities lawfully perfected, and that the obligations under the charge instruments remained binding, notwithstanding the death of the original chargor. He further asserted that the deceased's liability to the bank was significantly higher than alleged by the Applicant and extended beyond Kes. 100,000,000/-, and that the securities remained enforceable even after his death. The bank also rejected the Applicant's assertion that the fact of insurance or limitation of liability extinguished the debt.
20. He averred that after the 1st, 2nd, and 3rd Respondents defaulted in servicing the loan facilities, leading to the accrual of substantial arrears, the bank had issued demand letters and statutory notices in compliance with the *Land Act*, before undertaking valuation of the charged properties and instructing auctioneers to proceed with the sale. The deponent confirmed that the properties were duly advertised for sale by public auction scheduled for 16th April 2024.



21. Concerning the application seeking injunctive relief, the deponent contended that the Applicant had not satisfied the legal principles governing the grant of an injunction as set out in *Giella v Cassman Brown*. In that he had not established a prima facie case, as there was no privity of contract between him and the bank, and therefore he lacked the locus standi to restrain the bank from exercising its statutory power of sale. He further asserted that any loss suffered by the Applicant is compensable in damages, while the bank stands to suffer prejudice if restrained from recovering its debt.
22. Moreover, the deponent also raised objections to the effect that the Applicant lacked legal standing as the grant had not been revoked and that the dispute relates to land and enforcement of securities, which may fall within the jurisdiction of the Environment and Land Court. He characterized the suit and application as an attempt to delay or frustrate the bank's lawful realization of its securities. In conclusion, the deponent dismissed the motion as unmerited, whereas the bank had lawfully exercised its statutory rights following default. The deponent urged the Court to dismiss the motion with costs.
23. By his supplementary affidavit dated 15th May, 2025, the Applicant stated that the issues raised by the motion were not merely about loan facilities, but arise from a fundamentally flawed succession process in which the estate of his late father was fraudulently administered. He swore that he had successfully moved the High Court in the succession cause and the grant had since been revoked, with further orders for the reversal of the transfer of the suit properties from the 1st Respondent back to the name of the deceased.
24. Emphasising that the dispute centers on the illegality in the succession proceedings, including the exclusion of beneficiaries, he asserted that the suit properties were charged on the basis of a fraudulent grant and that the Respondents had no lawful authority to deal with the estate as confirmed by the court in revoking the grant. In answer to the 4th Respondent's depositions, the Applicant disputed the alleged outstanding loan amounts and contended that many of the facilities had already been substantially repaid during the deceased's lifetime. And besides, even where facilities existed, the 1st and 2nd Respondents had no authority to charge the estate properties after the deceased's death without the consent of all beneficiaries. Thus, in his view, any subsequent charges created in favour of the 4th Respondent were illegal and unenforceable.
25. Further asserting that the conduct of the 1st, 2nd, and 4th Respondents demonstrates collusion to deprive the beneficiaries of their inheritance in furtherance of a fraudulent scheme through which estate properties were transferred and charged without lawful authority, he accused the 4th Respondent of benefiting from these irregular dealings. He further asserted that the Respondents cannot rely on illegal acts to justify the realization of the securities. Thus, contending that the statutory notices and intended sale of the properties were invalid arising as they do, from charges created through an unlawful process. And that the pending dispute over the legality of the succession proceedings and the now-revoked grant directly impact the validity of the securities and the bank's right to exercise its statutory power of sale.
26. He therefore asserted that he had satisfied the threshold for the grant of an injunction under *Giella v Cassman Brown*, having established a prima facie case, and that he stands to suffer irreparable harm through loss of inheritance, whereas the balance of convenience favours preservation of the estate. He further contended that issues of illegality and fraud override the bank's claims and must be determined before any sale can proceed.
27. Pursuant to directions given for the motion to be canvassed by way of written submissions, the Applicant filed submissions dated 15th July, 2025. Recounting the background of the litigation, the counsel for the Applicant submitted that the singular issue for determination is whether the motion



satisfies the principles for grant of an injunction as laid down in the locus classicus case of *Giella vs Cassman Brown & Co. Ltd*[1973] EA 358.

28. Concerning the first hurdle whether a prima facie case has been established, the Applicant relied on the definition of a prima facie case in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others*[2003] KLR 125 and asserted that a prima facie case is established on the basis that the grant of letters of administration had been fraudulently obtained and had since been revoked; that the court ordered reversion of the properties to the deceased's name; that the existence and quantum of alleged debt is disputed; and that any transactions founded on the revoked grant are illegal.
29. On the second hurdle calling for demonstration of irreparable harm, reliance was placed on *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court of Appeal said that irreparable damage is likely to occur where there is no standard by which the likely damage can be measured with reasonable accuracy, or where the injury or harm is of such a nature that no amount of monetary compensation can be adequate remedy. Counsel reiterated that the intended sale of all the deceased's properties would permanently deprive the Applicant and other beneficiaries of their inheritance, which cannot be adequately compensated by damages. And that the properties having been unlawfully transferred and charged, their disposal would extinguish the estate.
30. Addressing the final consideration, namely, the balance of convenience, the Applicant's counsel cited *Bore v Equity Bank Limited (Civil Suit E 004 of 2024)* [2024] KEHC 4503 (KLR) to assert that the balance tilts in favour of the Applicant because he has demonstrated both a prima facie case and the likelihood of irreparable harm. Further, refusal of the injunction would expose him to greater prejudice, including the possibility of pursuing multiple parties if the properties are sold.
31. In conclusion, the Applicant urged the court to find that all three considerations in *Giella vs Cassman Brown*(supra) had been satisfied. Reiterating that the Respondents acted fraudulently in obtaining and utilizing the grant, and that the court had already nullified that process. Accordingly, the Applicant prayed that the motion be allowed with costs.
32. Once more, the 1st Respondent did not file submissions. Ditto for the 2nd Respondent, while the 3rd Respondent opted to rely on the affidavit of the 2nd Respondent.
33. The 4th Respondent's submissions are dated 22nd July, 2025. Rehashing some of its affidavit material, it was reiterated that the 4th Respondent was not a party to the succession cause or any irregularities in obtaining the grant and that the suit properties had been used as security for facilities granted to the 3rd Respondent prior to the deceased's death, and after his death upon confirmation of the grant, to secure facilities in the form of overdrafts and term loans in favour of the 3rd Respondent.
34. In addressing the issue whether the transfer and charging of the suit properties were illegal or fraudulent, the 4th Defendant invoked the protection afforded to an innocent purchaser by Section 93 of the *Law of Succession Act*, arguing that transfers by personal representatives remain valid notwithstanding subsequent revocation of the grant, provided the purchaser is not complicit in fraud. It was submitted that the bank was not involved in any fraud or illegality and had acted in good faith as an innocent lender. Moreover, the properties in question had already been charged to the bank to secure earlier facilities to the 3rd Respondent prior to the death of the deceased, and upon issuance of the confirmed grant and transmission of the assets to the 1st Respondent, the said securities merely replaced the earlier valid charges.
35. Counsel pointed out that the particulars of alleged fraud had not been specifically pleaded and proved against the 4th Defendant, and that fraud cannot be inferred and requires strict proof; that the securities remain valid and enforceable in the absence of proof of actual, constructive, or imputed knowledge of



any prior claims, fraud, or defects in title at the time of the transaction; and hence the 4th Respondent was fully entitled to exercise its statutory power of sale under the original and subsequent charges. Moreover, there was no privity of contract between the Applicant and the 4th Respondent thus, he lacks the locus standi to challenge the bank's exercise of its statutory rights.

36. As to whether the Plaintiff had met the threshold for the grant of an interim injunction, the 4th Defendant relied on the principles in *Giella v Cassman Brown & Co. Ltd*, [1973] EA 358 to argue that no prima facie case has been established, as was defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, namely, the demonstration of an apparent infringement of a right which calls for rebuttal. The 4th Respondent submitted that no fraud or illegality on its part has been demonstrated against it, and, the revocation of grant did not invalidate the securities held by the 4th Respondent. Besides, the Applicant has admitted the existence of the debt owed by the 3rd Respondent and upon default by the said borrower, the Respondent's rights as chargee had lawfully crystallized.
37. Further, the 4th Respondent submitted that an award of damages would adequately compensate the Applicant of any potential loss or injury. Adding that in light of default, if an injunction were granted, it is the 4th Respondent that stands to suffer irreparable damage due to the continued accumulation of the debt from accrued interest, with the possibility of outstripping the market value of the securities held. Here citing *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).
38. Finally, counsel for the 4th Defendant stated that the balance of convenience need not be considered in this case where the first two considerations have not been demonstrated, as held in *East African Development Bank v Hyundai Motors Kenya Limited*[2006] KECA 369 (KLR). In any event, it is contended that the balance tilts in favour of the bank, as it is the party exposed to inconvenience due to default and delay in recovery of the debt, and granting the injunction would further prejudice it by allowing the outstanding sums to escalate.
39. In conclusion, counsel urged the court to dismiss the motion as there was no legal basis to restrain the 4th Respondent from exercising its statutory power of sale, having duly complied with Section 96 and 97 of the *Land Act*.

Analysis and Determination

40. The court has considered the rival affidavit material and submissions canvassed in respect of the motion. The sole question to be determined is whether the Applicant has brought his case within settled principles that govern the grant of interlocutory injunctions. The court's power to grant temporary injunctions is donated by Order 40 Rules 1 and 2 of the Civil Procedure Rules. The now settled principles governing the grant of interlocutory injunctions were spelt out in *Giella v Cassman Brown & Co. Limited* [1973] EA 358 [supra] as reiterated in *Nguruman Limited* (supra).
41. The latter decision is particularly illuminating. In that case, the Court of Appeal described the role of the court in an application seeking temporary injunction to be merely to consider whether the principles for the grant of the interlocutory injunction were met. The Court further observing that:

“...Since the fundamentals about the implications of the interlocutory orders of injunctions are settled, at least over four decades since *Giella's* case, they could neither be questioned nor be elaborated in detailed research. Since those principles are already by authoritative pronouncements in the precedents, they may be conveniently noted in brief as follows:

In an interlocutory injunction application, the Appellants has to satisfy the triple requirements to:



- a. establish his case only at a prima facie level
 - b. demonstrate irreparable injury if a temporary injunction is not granted.
 - c. allay any doubts as to (b) by showing that the balance of convenience is in his favor.”
42. The Court explained that the three conditions above apply separately as distinct and logical hurdles to be surmounted sequentially by an applicant. Such that, it was not enough for the applicant to establish a prima facie case, they must further successfully establish irreparable injury, that is, injury for which damages recoverable at law could not be an adequate remedy. And where there is doubt as to the adequacy of damages, the Court will consider the balance of convenience. Conversely, where no prima facie case is established, the court need not consider irreparable injury or the balance of convenience. The Court of Appeal emphasized that the standard of proof is to prima facie standard.
43. Thus, questions falling to be answered here are whether the Applicant has established a prima facie case with a probability of success; the possibility of suffering irreparable injury incapable of being compensated by damages if the orders sought are denied; and that the balance of convenience tilts in her favour, if the second consideration is in doubt.
44. In the case of *Mrao Limited v First American Bank of Kenya and 2 Others* (2003) KLR 125[supra], the Court of Appeal defined what amounts to a prima facie case as follows:
- “A prima facie case in a civil case includes but is not confined to a “genuine or arguable” case. It is a case, which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right, which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”
45. There is no dispute here that prior to his death, the 3rd Respondent in which the deceased was a director enjoyed several financial facilities with the 4th Respondent, as secured by the suit properties, and that certain liabilities were still owing to the bank at the time of the deceased's death. It is not disputed that upon the grant to the 1st Respondent being confirmed, arrangements were made to transfer the said securities to her name and to execute new charges in respect of the existing liabilities, amalgamated in the sum of Kes. 67,000,000/- odd.
46. Although the 1st Respondent remained reticent, the 2nd Respondent confirmed these facts, stating that the bank “arm twisted” him and the 1st Respondent with regard to the amalgamation. Notably, however the 2nd Respondent barely addressed the allegations of fraud and illegality raised against him and the 1st Respondent by the Applicant concerning the process of obtaining the grant in respect of the estate of the deceased. While appearing to foist into the dispute a new claim of duress against the 4th Respondent, in support of the motion.
47. For his part, the Applicant while furnishing no proof asserted that liabilities owed by the deceased were much lower than the amalgamated amounts. Whatever the case, there was admitted default leading to the realization process by the 4th Respondent in respect of which the Applicant now seeks injunctive relief.



48. The Applicant's case against the 1st and 2nd Respondent is founded on fraud, illegality and irregularity in the succession proceedings leading to the confirmed grant, and indeed the said grant has now been revoked by the High Court. It is the Applicant's case that the disputed charges (and ultimately the debt) are unenforceable and invalid as they arise from a grant obtained through fraud, and illegality.
49. As against the 4th Respondent, the Applicant alleges illegality and irregularity in the creation of new charges secured by the properties that comprised assets of the estate of his deceased father. Based on the assertion that the said Respondent was during the course of the succession proceedings "working closely" with the 1st and 2nd Respondents and despite being "aware that the deceased had beneficiaries".
50. No evidence to support these allegations or involvement of the 4th Respondent in the succession cause, and strongly disputed by the 4th Respondent, was provided, whereas fraud was not pleaded against the 4th Respondent. Indeed, from the Applicant's pleadings and depositions, the prime mover of the alleged fraud and illegality is the 1st Respondent in cahoots with the 2nd Respondent, who is the father of the deceased. However, the prayers in the motion are principally aimed against the 4th Respondent.
51. On its part, the 4th Respondent gave a lengthy account supported by relevant documentation of transactions between it and the deceased prior to his death on behalf of the 3rd Respondent, and events leading to the amalgamation of his liabilities after his death, in the sum of Kes. 67,500,000/-.
52. The 2nd Respondent did not tender any support for the allegation that while some facilities had been granted without security before the deceased's death, he and the 1st Respondent were after the death coerced into accepting the amalgamated debt and to execute charges for the amalgamated sums, being desperate for finances to fund the 3rd Respondent's fledgling business. He however admitted, albeit indirectly, to the execution of the subsequent charges. The foregoing amounts to an admission of debt owed by the 3rd Respondent to the 4th Respondent.
53. Further, despite their depositions, neither the Applicant nor the 2nd Respondent demonstrated through tangible material that the liabilities due to the bank were lower than was demanded by the 4th Respondent at the time of commencement of foreclosure. Be that as it may, a dispute as to the amount of debt outstanding without more, cannot justify an injunction against a mortgagee whose statutory power of sale has crystallised from default.
54. The Court of Appeal in *Habib Bank A. C. Zurich -vs- Pop in Kenya Limited and Others* [1995]EKLR, held;

"...in the ultimate analysis this is a suit brought by chargors to restrain a chargee from exercising its statutory power of sale under the charges executed by them as security for money advanced to them and receipt of which they have unequivocally acknowledged. Default is not denied. Service of statutory notice is admitted. I have always understood the law to be that a court should not grant an injunction restraining a mortgagee from exercising its statutory power of sale solely on the ground that there is a dispute as to the amount due under the mortgage."



55. Similarly, in *Orion East Africa Ltd v Eco Bank Kenya Ltd and Another* [2015] e KLR the Court of Appeal set out the circumstances in which a mortgagee may be restrained from exercising its statutory power of sale. The Court stated: -

“The circumstances in which a mortgagee may be restrained from exercising its statutory power of sale are set out in Halsbury’s Laws of England, volume 32 (4th Edition) paragraph 725 as follows:

“725. When mortgagee may be restrained from exercising statutory power of power of sale.

The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has began a redemption action, or because the mortgagor objects to the manner in which the sale is being arranged. He will be restrained, however, if the mortgagor pays the amount claimed into court, that is, the amount which the mortgagee claims to be due to him, unless, on the terms of the mortgage, the claim is excessive.”

56. A key plank in the Applicant’s material supporting the motion is that the disputed charges in favour of the 4th Respondent were invalid and unenforceable because they were grounded on a grant that was obtained through fraud, and which had since been revoked. The 4th Respondent denying any involvement in the succession cause stated that it relied on the confirmed grant issued by the Court in favour of the 1st Respondent in subsequent transactions.

57. Hence invoking the protection accorded to a purchaser by Section 93 of the *Law of Succession Act* asserted that it had no notice of any fraud, illegality or irregularity concerning the succession proceedings in respect of the deceased. Whether indeed the said protection is available to the 4th Respondent will have to be determined upon a full hearing. Suffice to state here that based on the provisions of Section 93 of the *Law of Succession Act*, the revocation of a grant does not automatically invalidate any and every transaction founded on such grant. Thus, it is the court’s finding that on the face of the material proffered by the Applicant, no prima facie case has been made out against the 4th Respondent.

58. Although the foregoing is sufficient to dispose of the motion, it is also apparent that the value of the suit properties is capable of quantification in the event that any liability is eventually found against the 4th Respondent and damages awarded. As a financial institution, the 4th Respondent would be capable of making good any award of damages made in favour of the Applicant. Thus, the Applicant has failed to demonstrate irreparable injury if a temporary injunction is denied.

59. In addition, the balance of convenience appears to tilt in favour of the bank as the 3rd Respondent has, according to the 2nd Respondent gone under, portending the likelihood that the debt level could well escalate beyond the value of the charged properties, thereby exposing the bank to further losses. Courts are wary of granting temporary injunctions in favour of chargors where it appears that the debt in question may outstrip the value of the property charged, thereby exposing the chargee to more losses. See *Christopher Muroki v Housing Finance Company of Kenya and Another* [2006] e KLR and *Andrew M. Wanjohi v Equity Building Society Ltd and Another* [2006] e KLR.

60. In the result, the court found no merit in the motion dated 20.03.2026 and it is hereby dismissed with costs to the 4th Respondent. However, the court directs that before taking any further steps in the exercise of its statutory power of sale, the 4th Respondent shall conduct a fresh valuation of the suit properties.



DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 30TH DAY OF APRIL 2026.

C. MEOLI

JUDGE

In the presence of:

For the Applicant: Mr. Mola

For the 1st to 3rd Respondents: N/A

For the 4th Respondent: Ms. Kipkulei

C/A: Lepatei

