

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
COMMERCIAL & ADMIRALTY DIVISION  
COMMERCIAL SUIT NO. E517 OF 2025

CENTURION ENGINEERS & BUILDERS LIMITED.....PLAINTIFF

VERSUS

GUARDIAN BANK LIMITED ..... DEFENDANT

AND

GARAM INVESTMENTS AUCTIONEERS ..... INTERESTED PARTY

**RULING**

**Introduction**

1. This Ruling determines the Defendant's Notice of Motion application dated **29th December 2025**, brought under, inter alia, **Order 40 Rule 7** and **Order 45 Rule 1** of the Civil Procedure Rules. The Applicant seeks orders that the ex-parte injunctive orders issued on 5th November 2025 be reviewed, discharged, and/or set aside, with costs.
2. The impugned orders granted a temporary injunction restraining the Defendant from exercising its statutory power of sale over the charged property, on condition that the Plaintiff deposits Kshs. 10,000,000/= within sixty (60) days.

3. The Application is opposed by the Plaintiff/Respondent through a replying affidavit and a supplementary affidavit, both sworn on 7 January 2026 by Eng. Samay Singh, the Plaintiff's Managing Director.
4. By way of background, the Plaintiff instituted this suit on 4th August 2025, challenging the legality of the Defendant's intended sale of its property known as Title No. LR 12715/3237 Machakos ("the suit property"). The Plaintiff contends that it fully repaid the loan advanced by the Defendant and that the sums now demanded are illegal, unconscionable, and in violation of the in duplum rule.
5. Contemporaneously with the Plaint, the Plaintiff filed an interlocutory application seeking injunctive relief pending determination of the suit. Interim injunctions were granted on 12th August 2025, restraining the Defendant from selling the suit property.
6. On 22nd October 2025, following inter partes hearing, the Court extended the interim injunction on condition that the Plaintiff deposits thirty percent (30%) of the disputed amount within thirty (30) days, failing which the injunction would lapse automatically.
7. Aggrieved by the said condition, the Plaintiff filed an application dated 4th November 2025 seeking review and variation thereof. On 5th November 2025, the Court granted fresh ex-parte interim orders, restraining the sale of the suit property on condition that the Plaintiff

deposits Kshs. 10,000,000 within sixty (60) days, and directed the Defendant to respond.

8. The present application seeks to have these ex-parte orders of 5<sup>th</sup> November 2025 reviewed and/or discharged.
9. The Defendant contended that the Court did not expressly set aside the earlier order of 22nd October 2025, thereby resulting in two contradictory subsisting orders.
10. It is further submitted that the Plaintiff failed to comply with either of the conditional orders, particularly the requirement to deposit Kshs. 10,000,000/= within sixty (60) days, yet continues to enjoy injunctive protection to the Defendant's detriment.
11. According to the Applicant, the continued subsistence of the injunction prejudices the Defendant as interest continues to accrue on a non-performing loan while its statutory power of sale remains unlawfully restrained.
12. It is submitted that the Court has jurisdiction under Order 40 Rule 7 and Order 45 Rule 1 of the Civil Procedure Rules to review its orders for "any other sufficient reason," including to rectify uncertainty and disharmony on the record.

13. The Applicant therefore urged the Court to review and set aside the ex parte order of 5th November 2025.
14. The Plaintiff contended that the order of 22nd October 2025 was rendered moot by subsequent supervening events, namely the filing of the review application and the issuance of the order of 5th November 2025.
15. It was argued that the later order impliedly displaced the earlier one.
16. The Plaintiff further asserted that it approached the Court in good faith, citing genuine financial incapacity to comply with the 30% deposit condition, which would allegedly have impeded its right of access to justice under Article 48 of the Constitution.
17. It is also contended that the Defendant remains adequately secured, the suit property having been valued at approximately Kshs. 310 million against an alleged debt of about Kshs. 240 million.
18. The Plaintiff maintained that the present application is calculated to defeat its pending application for review, which has not yet been heard and determined.

## Analysis and Determination

19. Having considered the pleadings, affidavits, and rival submissions, the Court is of the view that the sole issue for determination is whether the ex-parte injunctive orders issued on 5<sup>th</sup> November 2025 may be reviewed, discharged, or set aside.

20. The jurisdiction of the Court to review its orders is anchored under **Section 80 of the Civil Procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules**.

21. Under the provisions, a party seeking review must demonstrate the discovery of new and important matter or evidence not within its knowledge despite due diligence, an error apparent on the face of the record, or any other sufficient reason.

22. In **Shanzu Investments Ltd v Commissioner of Lands [1993] eKLR**, it was held that the Court has unfettered discretion to review its orders for sufficient reason, but such discretion must be exercised judiciously and on sound legal principles.

23. In the present case, the Defendant's contention is that the coexistence of the order of 22<sup>nd</sup> October 2025 and that of 5<sup>th</sup> November 2025 constitutes an error on the face of the record. The Plaintiff disputes this assertion.

24. Upon careful consideration, the Court finds that the order of 5th November 2025 was a deliberate and lawful exercise of judicial discretion. It was issued to temporarily cushion the Plaintiff pending the hearing and determination of its application for review of the earlier conditional order, which the Plaintiff considered onerous and inimical to its right of access to justice.
25. The issuance of that order does not amount to an error apparent on the face of the record nor does it constitute sufficient reason for review. As was stated in *Patel v East Africa Cargo Handling Services Ltd* [1974] EA 75, courts should exercise discretion to promote substantive justice and avoid self-defeating technicalities.
26. While it is correct that the order of 5th November 2025 did not expressly vacate the earlier one, it is evident that the latter order, so long as it subsisted, temporarily superseded the earlier order of 22nd October 2025.
27. Accordingly, the prayer to review or set aside the ex parte order of 5th November 2025 lacks merit and is declined.
28. That, however, is not the end of the matter. The order of 5th November 2025 was expressly conditional. It granted injunctive relief on the condition that the Plaintiff deposits Kshs. 10,000,000/= in court within sixty (60) days.

29. The order was self-executing, such that failure to comply within the stipulated period would result in the automatic lapse of the injunction.
30. The sixty (60)-day period lapsed on 5th January 2026. By the Plaintiff's own admission in the supplementary affidavit, only Kshs. 2,000,000/= was deposited, and that payment was made on 14th January 2026, outside the stipulated timeline.
31. The Plaintiff's plea of good faith cannot override clear and unambiguous court timelines. To allow injunctive relief to persist despite non-compliance would unjustly prejudice the Defendant's statutory right of sale and undermine the authority of court orders.
32. In the premises, the Court makes the following orders:
- i. The Defendant's application dated 29th December 2025 for review is hereby dismissed.
  - ii. It is hereby declared that the interim injunction issued on 5th November 2025 lapsed upon the Plaintiff's failure to deposit Kshs. 10,000,000/= within sixty (60) days, that is, on 5th January 2026.

- iii. The Defendant is at liberty to proceed with the realization of its statutory power of sale over the charged property, in accordance with the law.
- iv. Each party shall bear its own costs of the application.

33. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI  
THIS 10<sup>TH</sup> DAY OF APRIL 2026



HON. MR. JUSTICE MOSES ADO  
*Judge of the High Court*

**In the presence of: -**

*C/A – Moses*

*Mutua..... for the Applicant*

*Bulowa..... for the Respondents*