



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kahuho & 3 others v Letshego Kenya Limited & another (Commercial Case 1 of 2023) [2026] KEHC 5872 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5872 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
COMMERCIAL CASE 1 OF 2023  
FN MUCHEMI, J  
APRIL 30, 2026**

**BETWEEN**

**MARY GATHONI KAHUHO ..... 1<sup>ST</sup> PLAINTIFF  
NICHOLAS GICHUHI KAHUHO ..... 2<sup>ND</sup> PLAINTIFF  
SIMON NJENGA KAHUHO ..... 3<sup>RD</sup> PLAINTIFF  
LUCY WAMBUI KAHUHO ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**LETSHEGO KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT  
ELIEZER KAMAU MUGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application 7<sup>th</sup> August 2025 seeks for orders against to the 1<sup>st</sup> defendant/respondent to deposit the sum of Kshs. 2,500,000/- deposited by the applicant being 25% of the purchase price at the auction on 20<sup>th</sup> April 2024, in an interest earning account at the rate of 18% from the date of deposit until the suit is heard and determined. The applicant further seeks for security of costs incurred to secure the suit premises be factored at the rate of Kshs. 40,000/- per month for the months commencing September 2023 until June 2025 when the premises was handed over to Mafflora Agencies and the same to be deposited in the same interest earning account pending the determination of the suit.
2. The plaintiffs and 1<sup>st</sup> defendant opposed the application and filed Replying Affidavits dated 19<sup>th</sup> August 2025 and 17<sup>th</sup> March 2026.



### **Applicant's Case**

3. The applicant states that he purchased the suit property known as LR. No. Ruiru/Kiu Block 13/960 at a public auction advertised and conducted by Regent Auctioneers on 20<sup>th</sup> April 2023 and deposited a sum of Kshs. 2,500,000/- with the 1<sup>st</sup> defendant at the fall of the hammer. The applicant further states that he is in the business of investment and is apprehensive that his deposit with the 1<sup>st</sup> defendant will lose great value during the pendency of the suit and will only benefit the 1<sup>st</sup> defendant.
4. The applicant states that the 1<sup>st</sup> defendant is still receiving deposits from the plaintiffs on the loan account and appears to benefit most as land matters take long to be determined and he will lose value by the time the instant suit is determined and will suffer great damage and loss in terms of income. The applicant further states that when he took possession of the suit premises he engaged four security guards at a time from Angel Security Co. at a cost of Kshs. 20,000/- each per month and paid a total of Kshs. 40,000/- per month between 2<sup>nd</sup> August 2023 and June 2025 which totals to Kshs. 880,000/-.
5. The applicant argues that the duty of the court is to secure the interests of all litigants in civil litigation to avoid a situation where one party holds the money deposited to the detriment of the depositor and enjoys the fruits thereof. The deposits are put in use by the 1<sup>st</sup> defendant in circulation and any interest or benefit must be accounted for by the 1<sup>st</sup> defendant. The applicant further states that should the court make a finding in favour of the plaintiff then all deposits made to the account of the 1<sup>st</sup> defendant on account of auction of the suit property will be refunded and that interests must be accounted at the time of the refund. The applicants urges the court to make orders to secure his deposits as he does not have the suit property or deposits for his own personal investment as intended.

### **The Plaintiffs/Respondents' Case**

6. The respondents state that the amount of Kshs. 2,500,000/- deposited at the fall of the hammer should not be placed in the custody of the 1<sup>st</sup> defendant but applied towards the urgent renovation of the suit property which is currently in a dilapidated state. The said property was in good condition when the applicant took possession and the current deterioration is attributable to his period of occupation. The respondents further state that there was no sale by public auction as alleged by the applicant.
7. The respondents deny the request for security of costs as prayed as the applicant has been in occupation of the suit property from around September 2023 until June 2025 a period of 22 months during which they deprived the 1<sup>st</sup> plaintiff of rental income rightfully due to her as the registered owner. The respondents further state that based on the fair monthly rental value of Kshs. 100,000/-, the applicant should be compelled to pay a total of Kshs. 2,200,000/- being the amount lost by the 1<sup>st</sup> plaintiff during their unlawful occupation. The respondents argue that the claim for interest at 18% on the deposit sum is misconceived and inequitable in the circumstances, given that the applicant enjoyed beneficial occupation without payment to the 1<sup>st</sup> plaintiff and any further benefit to him would amount to unjust enrichment.
8. The respondents state that the allegation of incurring security of costs is denied to the extent that such costs were unnecessary and self imposed as the applicant took occupation without consent and was aware of the ongoing dispute over the property and used goons and police to intimidate the plaintiffs and the tenants. Further, his occupation was in total contempt of the court order and he cannot purport to benefit from his doings which were in total contempt and intentional violation of the court order while enriching himself with rental income. The respondents argue that the purported sale was by conspiracy and collusion by the defendants which the applicant is a party with a view of arbitrary depriving and defrauding the suit property. Further, the purported sale was done in a very opaque



manner and the documents issued in support of the purported sale are only manufactured to conceal and deceive the court that there was a sale by public auction.

9. The respondents aver that the applicant caused six tenants and the 4<sup>th</sup> plaintiff to be arrested, detained and maliciously charged with fabricated charges of causing malicious damage and creating disturbance in Ruiru MCCR No. E2238 of 2023 Republic vs James Kariuki Mwaura & 7 Others and the applicant deliberately and intentionally stationed the said security and other goons so that they can harass, intimidate and ensure the plaintiff<sup>7</sup> tenants vacate the premises so that he can give occupation to his tenants.
10. The respondents state that the applicant's handing over of the property to Maflora Agencies for management was pursuant to court orders but such handing over does not erase the fact that the applicant enjoyed exclusive possession and deprived the 1<sup>st</sup> plaintiff of lawful rental income in total deliberate and intentional contravention of the court order. The respondents further state that equity demands that a party who has enjoyed occupation without payment should not continue to derive financial benefit through interest on sums he voluntarily paid as a deposit in an auction whose completion is in dispute. Further, the court's duty to secure litigants' interests must be balanced against the need to uphold the rule of law and prevent unjust enrichment or misuse of judicial processes.

### **The 1<sup>st</sup> Defendant/Respondent's Case**

11. The 1<sup>st</sup> respondent states that the sale of the suit property by public auction was undertaken pursuant to its statutory power of sale as a chargee under Sections 90, 96, 97 and 99 of the [Land Act](#) and the terms of the charge instrument securing the plaintiff's loan. The 1<sup>st</sup> respondent further states that its rights as chargee arise pursuant to Section 56(1) of the [Land Registration Act](#) which recognize the creation and registration of charges over land as security and the rights of a chargee to realize such security upon default. The deposit paid by the applicant was received by the 1<sup>st</sup> respondent pursuant to the said statutory processes and in accordance with the terms of sale issued at the public auction.
12. The 1<sup>st</sup> respondent argues that the issues concerning the validity of sale and the entitlement to the deposit are matters that fall for determination by this Honorable Court at the hearing of the main suit. The 1<sup>st</sup> respondent further states that interest rates offered by financial institutions are not fixed and fluctuate from time to time depending on prevailing market conditions and the imposition of a specific commercial rate at the instant interlocutory stage would be premature given that the ultimate entitlement to the said funds remains the subject of the pending suit. Further, the determination of whether any interest is payable and at what rate is a matter that can only properly arise upon determination of the rights and liabilities of the parties in the main suit and not at the interlocutory stage.
13. The 1<sup>st</sup> respondent states that the costs of Kshs. 880,000/- were incurred solely at the instance of the applicant who had been given possession pursuant to the court order dated 28<sup>th</sup> August 2023. The 1<sup>st</sup> respondent further states that when the applicant took possession, the sale of the suit property had not been completed and the applicant had only paid a deposit towards the purchase price with no certainty that he would complete payment of the balance of the purchase price within the stipulated timelines. Thus the applicant took possession at his own risk and any security of costs incurred were self-imposed.
14. The 1<sup>st</sup> respondent avers that at the time of sale, it did not anticipate the filing of the present case which was instituted to disrupt or delay the conclusion of the auction, matters which were entirely beyond its control. The 1<sup>st</sup> respondent argues that it is not benefiting unfairly from the deposit as the applicant voluntarily participated in the auction and accepted the terms of sale, which provided that



the transaction was to be concluded within three months from the date of the auction and the present suit was unforeseeable.

15. The 1<sup>st</sup> respondent avers that the orders sought are unnecessary as the status quo already protects the funds and it will not deal with the property until the court varies or sets aside the orders. The 1<sup>st</sup> respondent further avers that the relief sought by the applicant would create unnecessary administrative complications in managing the deposit and would impose obligations on it that are not contemplated under the statutory framework governing the sale of the charged property. It would set an undesirable precedent whereby a purchaser seeks to dictate how statutory deposits are handled.
16. Parties put in written submissions.

### **The Applicant's Submissions.**

17. The applicant submits that the proceeds arising from the auction constitute the subject matter in the dispute and unless preserved, there is a real risk that his rights may be rendered nugatory. The applicant further submits that the orders sought do not prejudice either party as the funds will be secured in a neutral joint interest earning account in the names of both advocates on record which balances the respondent's interest in securing the decretal sum while equally safeguarding his right to pursue the application.
18. The applicant argues that courts have consistently held that where security is required, it should be provided in a manner that is least oppressive and ensures that no party gains an undue advantage over the other. Therefore depositing the funds in a joint interest earning account satisfies the said requirement while ensuring transparency and accountability.
19. The applicant further argues that the respondent will suffer no prejudice as the funds remain intact and continue to accrue interest. Conversely, releasing the funds to one party before the final determination may occasion irreparable loss to him. The applicant relies on the cases of *Butt vs Rent Restriction Tribunal* [1982] KLR 417 and *Focin Motorcycle Co. Ltd vs Ann Wambui Wangui & Another* [2018] eKLR and submits that courts have endorsed the deposit of disputed sums in joint interest earning accounts as an appropriate interim measure.

### **The 1<sup>st</sup> Respondent's Submissions**

20. The 1<sup>st</sup> respondent submits that the applicant seeks to alter, not preserve the status quo. It is not in dispute that the court has already issued orders preserving the status quo pending the hearing and determination of the suit. The effect of those orders together with the consent recorded on 24<sup>th</sup> June 2025 was to preserve the suit property, halt completion of sale and to secure the interests of all parties pending the trial. The 1<sup>st</sup> respondent argues that the orders sought go beyond preservation and amount to restricting the parties' rights at an interlocutory stage. The 1<sup>st</sup> respondent relies on the cases of *Mbuthia vs Jimba Credit Finance Corporation & Another* [1988] KECA 116 (KLR) and *City Finance Limited & 2 Others vs Nyanja Holdings Limited & 3 Others* Civil Appeal 224 of 2020 & E166 & E174 of 2021 (Consolidated) [2026] KECA 106 (KLR) (30 January 2026) (Judgment) and submits once a statutory sale has occurred and a purchaser has paid the deposit, the law treats the transaction as valid and protected save for demonstrated bad faith or fraud.
21. The 1<sup>st</sup> respondent argues that the applicant's request for the deposit to earn an interest at 18% pre annum is speculative and premature. Further Section 26 of the *Civil Procedure Act* contemplates interest as part of final relief upon determination of the dispute and not as an interlocutory or



preservatory entitlement. Relying on the case of Highway Furniture Mart Limited vs Permanent Secretary Office of The President & Another [2006] KECA 190 (KLR), the 1<sup>st</sup> respondent submits that interest is compensatory and arises only where a party has suffered deprivation as a result of another's wrongdoing which the applicant has failed to demonstrate in the present case. The 1<sup>st</sup> respondent further submits that the applicant has not filed a defence to the plaintiffs' suit or filed a counterclaim against it or established any entitlement to interest or other financial relief in respect of the deposit. Thus by seeking to fix a commercial interest rate at this interlocutory stage, the applicant is effectively asking the court to determine a substantive entitlement before the main suit is heard, which is premature and procedurally inappropriate.

22. The 1<sup>st</sup> respondent submits that the alleged costs of Kshs. 880,000/- were never agreed upon, quantified or authorized. The applicant took possession of the property at his own risk following the public auction even before paying the full purchase price and without its consent. The 1<sup>st</sup> respondent further submits that it had not granted permission for early possession under the terms of sale, possession was to be given only on completion of payment of the entire purchase price. The exit from the property occurred pursuant to the consent recorded on 24<sup>th</sup> June 2025 and thus any costs incurred by the applicant were voluntary, self-imposed and not recoverable against it.
23. The 1<sup>st</sup> respondent argues that interlocutory relief must be grounded on evidence demonstrating a real risk of injustice and not on vague or unsubstantiated assertions. A claim for security of costs that has not been pleaded in the pleadings before the court and for which no admissible evidence has been adduced cannot form the basis for interim orders. Further, the 1<sup>st</sup> respondent submits that the amount of Kshs. 880,000/- claimed falls within the category of special damages which are losses that must be specifically pleaded and strictly proved. To support its contentions, the 1<sup>st</sup> respondent relies on the cases of John Richard Okuku Oloo vs South Nyanza Sugar Co. Ltd [2013] KECA 73 (KLR); Superior Homes (Kenya) PLC vs Water Resources Authority & 9 Others Civil Appeal E330 of 2020 [2024] KECA 1102 (KLR) (19 August 2024) (Judgment) and Mutwti vs Peter & 3 Others Civil Appeal 41 of 2018 [2022] KEHC 10084 (KLR) (14 July 2022) (Judgment) and submits that the applicant has neither pleaded the alleged costs in the plaint nor adduced evidence to prove that they were actually incurred or that they resulted from any act or omission by the 1<sup>st</sup> respondent. Thus the 1<sup>st</sup> respondent argues that allowing the applicant to claim speculative expenses at the interlocutory stage would amount to pre-judging the merits of the main suit and to creating a precedent whereby parties could demand recovery of unverified expenses without proof.
24. The 1<sup>st</sup> respondent submits that the issues raised in the application are substantive matters that fall to be determined at the trial of the main suit. Interlocutory proceedings are intended to preserve the status quo or prevent irreparable harm and not to decide substantive rights. The applicant will not suffer prejudice if the relief sought is denied as the court retains full power to make appropriate orders upon determination of the main suit.

## **The Law**

25. The plaintiffs instituted the current suit through an application dated 7<sup>th</sup> November 2023 whereby they sought orders of an injunction restraining the defendants from selling, trespassing, transferring, charging, leasing renting or in any way from interfering with their use and occupation of LR. No. Ruiru/Kiu Block 13/960 and or evicting the tenant and or collecting rent thereon or disconnecting electricity and water and any other utility thereon pending the hearing and determination of the suit. They further sought for an injunction to restrain the 1<sup>st</sup> defendant, its agents and or servants from transferring LR No. Ruiru/Kiu Block 13/960 to the 2<sup>nd</sup> defendant and or his agent, servant and or allottee or any other person pending the hearing of the suit. The plaintiffs further sought for the court



to order and direct that Pink House Management Limited to continue managing the house and all the rental income from LR. No. RUIRU/BLOCK 13/960 be deposited to the 1<sup>st</sup> plaintiff's Equity Account No. 0630197404097 of which 30% be utilized for her upkeep, maintenance and medication and 70% to await the outcome of the suit or further orders. Further, the 1<sup>st</sup> defendant be directed to furnish the plaintiffs with a true and reconciled statement of loan account as to date and balance thereof if any, with interest if any well tabulated with calculating formula.

26. The court rendered its ruling on the said application on 20<sup>th</sup> August 2024 and issued an injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendants from selling transferring, trespassing, charging, leasing, renting or interfering with the plaintiffs' use and occupation of LR No. Ruiru/Kiu Block 3/960 and/or collecting rent thereon or disconnecting electricity and water and any other utility thereon, pending the hearing and determination of the suit. The court in reaching the said conclusion found that the plaintiffs had not been served with the 45 days redemption notice. For that reason, the 1<sup>st</sup> defendant could not rightly exercise its power of sale on the security as the right to sell had not accrued which rendered the sale of the suit property premature. The court further found that the matter would need to go for full hearing as the suit property was sold at a discrepancy value of Kshs. 10,600,000/- despite the plaintiffs annexing a valuation report indicating the market value at Kshs. 24,800,000/-. The court further held that at the interlocutory juncture it could not determine whether the 2<sup>nd</sup> defendant purchased the suit premises lawfully through public auction and thus the said issues ought to be addressed during the hearing. It is evident that this court has already determined that the matter ought to be ventilated at the hearing since matters of the sale of the suit property were in contention and could not be determined at the interlocutory stage.
27. It is noted that this case was instituted by the plaintiffs who alleged that the sale of their property was unlawful due to the 1<sup>st</sup> defendant's failure to comply with the law. The 2<sup>nd</sup> defendant/applicant was joined as a party on the basis that he is the one who bought the property at a public auction. The validity of the said public auction has also been questioned in these proceedings. The applicant has not filed any claim herein and is only a defendant against the plaintiffs case. I am of the view, that for the court to grant orders sought herein, they must be founded on a cause of action. The applicant has not filed a counter-claim in these proceedings. I am of the considered view that the prayers for Ksh.2,500,000/= in a joint interest earning account are not well grounded in this case due to the fact there is no decree in existence in favour of the applicant as against the plaintiffs and the 1<sup>st</sup> defendant. The prayer for security of costs of Ksh.880,000 against the plaintiffs is also misplaced in my view.
28. The 1<sup>st</sup> defendant/respondent accuses the applicant of unlawfully taking possession of the premises in that he had only paid deposit and that the process of purchase of the property had not been completed. The 1<sup>st</sup> defendant argues that if the applicant incurred any loss, then it was of his own making. In my view, the applicant may have a cause of action against the 1<sup>st</sup> defendant on his losses but such claims must be instituted in accordance with the law.
29. The orders of status quo issued by this court in favour of the plaintiffs were violated by the 2<sup>nd</sup> defendant when he refused to move out of the premises in question after the court ordered him to do so. He stayed in the premises collecting rent for almost two years. He does not explain where he took the rent unlawfully collected from the premises for the two-year period despite a court order to vacate and hand over the premises to the plaintiffs. It is not in dispute that the applicant has not come to court in this application with clean hands.
30. My view is that the case ought to be determined between the plaintiffs/respondents and the defendants before the applicant can seek the prayers he has made in his application. If the defendant wishes to make any claim in this case, I repeat, that he has to follow the laid down procedures.



31. Consequently, I find no merit in the application dated 7<sup>th</sup> August 2025 and dismiss it accordingly with costs to the plaintiffs/respondents and the 1<sup>st</sup> defendant/respondent.

32. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**F. MUCHEMI**

**JUDGE**

