



REPUBLIC OF KENYA



**Kilimapesa Gold Pty Limited & 5 others v Garam Investments
Auctioneers & another (Commercial Case E275 of 2025)
[2026] KEHC 5580 (KLR) (Commercial and Tax) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E275 OF 2025
MA OTIENO, J
APRIL 17, 2026**

BETWEEN

**KILIMAPESA GOLD PTY LIMITED 1ST PLAINTIFF
RONALD SHIKUKU WANJALA 2ND PLAINTIFF
ROBERT ANDREW MCCRAE 3RD PLAINTIFF
BREWER PAUL JASON 4TH PLAINTIFF
GERALD KISBEY GREEN ANTHONY 5TH PLAINTIFF
LOJOMON KIPSANG BIWOTT 6TH PLAINTIFF**

AND

**GARAM INVESTMENTS AUCTIONEERS 1ST DEFENDANT
ABSA BANK KENYA PLC 2ND DEFENDANT**

RULING

1. This ruling concerns a Notice of Motion dated 14th April 2025, brought under section 23(b) of the *Auctioneers Act*, Rule 12(1)(b) of the Auctioneers Rules, and Orders 40 rule 1 and 50 rule 1 of the Civil Procedure Rules.
2. The applicants sought interim and final injunctive orders restraining the respondents from auctioning the 1st plaintiff's movable assets, together with orders compelling the 2nd respondent to unfreeze certain bank accounts, pending the hearing and determination of the suit.
3. In particular, the applicants sought the following substantive orders:



- i. A temporary injunction pending hearing and determination of the suit restraining the respondents from auctioning the 1st plaintiff's movable assets, namely eight (8) Ashok Leyland Stallion motor vehicles registration numbers KHMA 213U, KHMA 214U, KHMA 215U, KHMA 216U, KDJ 113J, KDJ 116J, KDJ 118J, and KDJ 124J.
 - ii. An order directing the 2nd respondent to unfreeze the accounts of the 2nd and 3rd plaintiffs pending hearing and determination of the suit.
 - iii. Costs of the application.
4. The application was premised on the contention that the 1st respondent, acting as an auctioneer for the 2nd respondent, intended to proceed with an auction without issuing or serving proclamation notices as required under the Auctioneers Act and Rules, rendering the intended auction illegal and unprocedural.
5. The applicants contended that the auction had already been advertised and was imminent, and that unless restrained, their assets would be unlawfully sold.
6. It was averred that the 1st applicant entered into four asset finance agreements dated 14th July 2022 with the 2nd respondent for a total sum of USD 708,015.00, secured by the logbooks to the financed motor vehicles and guaranteed by the 2nd to 6th applicants.
7. The applicants stated that after experiencing financial difficulties, they fell into arrears. They further alleged that the assets were seized without issuance of proclamation notices and that the 2nd respondent froze accounts belonging to the 2nd and 3rd applicants, thereby frustrating efforts to regularise the loan through ongoing negotiations and a recapitalisation plan.
8. According to the applicants, the respondents' conduct occasioned irreparable financial loss, business disruption, and reputational harm, while no prejudice would be suffered by the respondents if injunctions were granted.
9. The application was opposed through a replying affidavit sworn on 2nd May 2025 by Samuel Njuguna, the legal officer and secured lending team leader – collections and recoveries of the 2nd respondent.
10. Mr. Njuguna stated that the 1st plaintiff admitted obtaining the loan facilities and defaulting on repayment. The amounts due were not disputed. Despite demand notices and written acknowledgements of indebtedness, the plaintiffs failed to regularise the arrears.
11. It was deponed that proclamation notices were duly issued by the 1st respondent and that there was no evidence that the 2nd respondent froze the accounts of the 2nd and 3rd plaintiffs.
12. The respondents contended that the application was an attempt to evade contractual obligations, amounted to an abuse of court process, and that the plaintiffs had approached the court without clean hands and were therefore undeserving of equitable relief.
13. The parties filed written submissions, which I have considered together with the pleadings and affidavits on record.

Analysis and Determination

14. From the pleadings and submissions, the Court finds that the sole issue for determination is whether the plaintiffs have met the threshold for grant of interlocutory injunctive relief.
15. It is settled law that an applicant seeking an injunction must satisfy the principles set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, namely:



- i. establishment of a prima facie case with a probability of success;
 - ii. demonstration that irreparable injury would be suffered if the injunction is not granted;
 - iii. where in doubt, determination on a balance of convenience.
16. These principles are sequential, and failure to establish a prima facie case obviates the need to consider the remaining limbs, as held in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2013] eKLR.
 17. The meaning of a prima facie case was elucidated in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, where the Court of Appeal held that such a case must disclose an apparent violation of a right calling for rebuttal.
 18. In the present case, it is not disputed that the 1st plaintiff obtained loan facilities from the 2nd defendant secured by the subject motor vehicles and guaranteed by the 2nd to 6th plaintiffs.
 19. The plaintiffs expressly admitted default in loan repayment in paragraph 11 of the supporting affidavit and acknowledged the outstanding indebtedness in correspondence dated 18th October 2024, annexed as exhibit “RS-4”.
 20. The default prompted the 2nd defendant to instruct the 1st defendant to proclaim and repossess the vehicles used as security.
 21. The plaintiffs’ sole basis for seeking an injunction is the allegation that proclamation notices were not issued or served. The defendants, however, produced copies of proclamation notices together with certificates of service, appearing at pages 89 to 97 of their exhibits. These documents show that the plaintiffs’ agents declined to sign upon service.
 22. From the documents produced, the Court is satisfied that the proclamation notices were duly issued and served in compliance with the Auctioneers Rules.
 23. Consequently, the plaintiffs have failed to demonstrate any infringement of a right requiring explanation or rebuttal by the defendants and have therefore failed to establish a prima facie case.
 24. In line with *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (supra), having failed to establish a prima facie case, it is unnecessary for the Court to consider irreparable harm or balance of convenience.
 25. Taking into account the plaintiffs’ admitted indebtedness and the absence of any procedural illegality in the repossession process, I find the application devoid of merit.
 26. Accordingly, the Notice of Motion dated 14th April 2025 is hereby dismissed with costs to the defendants.
 27. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 17TH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADO

JUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

Orimba..... for the Applicant

Mbabu..... for the Respondent

