

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELC LAND CASE NO. E052 OF 2025

NAOMI WAITHERA KAHURANI.....
.....PLAINTIFF

VERSUS

EQUITY BANK (KENYA) LTD.....1ST
DEFENDANT

MILLI-IONS GLOBAL CO. LTD.....2ND
DEFENDANT

MARTIN MIIRI KARANJA.....3RD
DEFENDANT

RULING

1. Before me for determination is a Notice of Motion dated 30th October, 2025 brought pursuant to the provisions of Sections 89, 90, 96, 103, 104, 105 and 106 of the Land Act, 2012, Order 40 Rules 1, 2, 3, 4, 10 and 9 and Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, (2010) and Sections 1A, 1B, 3 & 3A and 63 (e) of the Civil Procedure Act, Cap 21 Laws of Kenya, the Constitution of Kenya 2010 and all other enabling provisions of the Law in which Plaintiff has sought for the following orders; -

i. Spent

ii. Spent

iii. That the Honorable Court be pleased to Order that the 1st Defendant/Respondent whether by itself, its auctioneers, employees, servants and/or agents or otherwise assigns and/or any person whatsoever acting on its behalf and/or under its mandate and/or instructions be restrained by way of injunction from alienating, advertising for sale, offering for sale, selling, taking possession of, leasing,

appointing a receiver, transferring, charging or otherwise in any manner whatsoever howsoever interfering with the Plaintiff/Applicant's property known as Title Number Naivasha/Mwichiringiri Block 4/230 (Mirera) pending the hearing and determination of this Suit.

- iv. That an Order be made under the doctrine of lis pendens and Section 106 of the Land Registration Act, (1959) (Repealed), that pending the hearing and final determination of this Application and/or Suit in accordance with the law, all further actions by the Defendants/Respondents against the Plaintiff's Title Number Naivasha/Mwichiringiri Block 4/230 (Mirera) with any Land Registry, Government Department and all other registering authorities be and is hereby prohibited.
 - v. That interim Orders do issue in terms of Prayers 2 and 4 herein above.
 - vi. That the Honourable Court be pleased to issue an Order directed at the Deputy Inspector General of Police and/or the Sub-County Police Commander Naivasha and/or any of his Officers do assists with the enforcement and compliance of the Orders issued herein.
 - vii. That the Honourable Court be pleased to grant such other or further Orders as it may deem fit to grant in the interest of equity and justice.
 - viii. That costs of this Application be borne by the Defendants/Respondents.
2. The Application was supported by the grounds set out therein, as well as the Supporting Affidavit of even date, sworn by Naomi Waithera Kahurani, the Plaintiff herein, who deponed that she is the beneficial owner and proprietor of all that property known as Title Number: Naivasha/Mwichiringiri Block 4/230 (Mirera) (suit property), having

inherited the same from her late mother, Margaret Maitha Kahurani, vide a Certificate of Confirmation of Grant dated 27th May, 2022.

3. That, thereafter, sometime in the year 2022, she engaged the 3rd Respondent, an acquaintance who had occasionally assisted her with informal jobs on the suit property, to assist her with the process of transferring the Title of the suit property from her late mother's name to her name.
4. That, as her confidant, she had trusted the 3rd Respondent with a copy of her National Identity Card and a previous copy of the Original Title deed to the suit property in her mother's name, as he had assisted her, with the help of Advocate Mary Mbugua, in the Succession proceedings, in which she had obtained the Confirmation of Grant dated 27th May, 2022
5. Subsequently, she had made numerous follow-ups with the 3rd Respondent regarding the change of Title to her name, to no avail, until around 15th October, 2025, when, in utter shock and dismay, she had received a call from a representative of the 1st Respondent indicating that they had been trying to reach her because her contact details were not on their file, and that the 2nd Respondent had financial arrears owing to the Bank, in which she had allegedly been named as Guarantor. She had neither guaranteed any such loan facility to anyone nor was she aware of such a facility.
6. The Charge documents issued to her by the 1st Respondent, with an alleged executed affidavit over a loan, showed that the 2nd Respondent, a complete stranger to her, had taken a loan from the 1st Respondent, with the suit property as security.
7. She refuted that she had executed any Statutory Banks forms or an Affidavit as a Guarantor for the loan issued to the 2nd Respondent, since she did not know the Directors of the 2nd Respondent and had never had any contact with any of them. She further stated that the 1st Respondent had issued her a demand letter to regularise the account on the basis of her alleged status as a Guarantor to the 2nd Respondent, failing which her

inherited charged property, with a market value of over Kenya Shillings Thirty Million (Kshs. 30,000,000/=), would be auctioned.

8. That subsequently, she had reported the matter at Naivasha Police Station and recorded a statement at DCI Naivasha on 17th October 2025 with the OB referenced as 25/17/10/2025 to enable proper investigations into the fraud.
9. She deponed that the suit property was in immediate and imminent danger of being unlawfully and unjustifiably sold by the 1st Respondent by way of public auction in a purported exercise of statutory power of sale, which had, however, not arisen, thereby occasioning her great injustice.
10. That on or around the 15th October, 2025, she had called Advocate Mary Mbugua, who informed her that the original Title had been collected and given to the 3rd Respondent. Information that the 3rd Respondent had not disclosed.
11. She deposed that any purported transaction over the suit property was fraudulently initiated by the 2nd Respondent and/or its director(s) in collusion with the 3rd Respondent. She further deposed that the 1st Respondent had conducted itself unlawfully, negligently and/or inequitably in relation to the loan account. She denied having been issued with either the 90 days' statutory notice or the Forty (40) days' notice, contrary to the requirements of the law. She further deposed that the 1st Defendant had not issued a Notification of Sale or the 45-day Redemption Notice, nor had she been served with a demand notice or letter regarding any default in the repayment of the loan, together with a statement of account as required by law.
12. That whereas the suit property is a prime property valued at more than Kshs. 30,000,000/=, the 1st Defendant/Respondent had not conducted any valuation of the charged property, hence there was a real and imminent danger that it would be sold for less than the current market value. That despite the foregoing glaring irregularities, the 1st Defendant/Respondent had threatened to advertise the suit property for sale by public auction,

actions that were clearly motivated by malice and were crafted and designed to ensure that she loses her prime inherited property.

13. That further, the interest charged by the 1st Defendant/Respondent was excessive and punitive, and the statutory power of sale in favour of the 1st Defendant/Respondent had not arisen at all. The court had the power to grant the remedies sought under Section 104(2) of the Land Act, including cancelling, varying, suspending, or postponing any scheduled sale, since she was not aware of any loan accounts that would necessitate such draconian measures by the 1st Respondent.
14. That it was thus desirable, fair and just that the Honourable court should intervene as; -
 - i. She had demonstrated a prima facie case with probability of success.
 - ii. Any adverse sale will result in losses which will not be adequately compensated by an award of damages since loss of the suit property would be irreparable to the Applicant.
 - iii. In the circumstances, it is imperative that the suit property's title be preserved.
 - iv. That the balance of convenience lies with her.
15. That the instant Application has been made diligently without delay, having only become aware of the matter on or around 15th October, 2025. That indeed, the ends of justice and equity would be defeated and frustrated unless the Orders sought herein were granted.
16. In response to and in opposition to the Applicant's Application, the 1st Defendant/Respondent through its Replying Affidavit dated 28th November 2025, sworn by Mary Katoni, the 1st Respondent's credit manager deponed that, vide a letter of offer dated 22nd August 2022, the 1st Defendant had granted a banking facility to the 2nd Respondent/Defendant in the sum of Kshs. 20,000,000/= . One of the conditions of which was that the facility would be secured by a personal

guarantee from the Applicant herein, supported by a legal charge of Kshs. 9,750,000/= over land Title Number Naivasha/Mwichiringiri Block 4/230 (Mirera) (suit property), to be registered and stamped in favour of the 1st Defendant.

17. That the said Letter of Offer had duly been executed by the parties, including the Applicant, as a sign of acceptance of the 1st Defendant's facility, and the execution had been by a duly qualified advocate, thus creating a presumption of due execution under the provisions of the Evidence Act and the Land Registration Act. That subsequently, the 1st Defendant had instructed a qualified firm of advocates to do the necessary security perfection for the said facility.
18. Accordingly, the following documents had been prepared:
 - i. Charge Instrument for Title Number Naivasha/Mwichiringiri Block 4/230 (Mirera).
 - ii. Deed of Guarantee and Indemnity between Naomi Waithera Kahurani (Guarantor) and Equity Bank of (K) Limited (lender).
 - iii. A declaration that the Chargor, Naomi Waithera Kahurani, the Applicant herein, did not require a spousal consent to charge the suit property.
19. She deposed that all the aforementioned documents had been executed by the Applicant herein and the execution was witnessed by competent officers. That subsequently, upon perfection of the securities and the registration process, the loan was advanced in accordance with the terms of the offer letter. That, unfortunately, the 2nd Defendant had defaulted on loan repayment; hence, the necessary notices had been issued as follows:
 - i. Notification of their sourcing of the account secured by property Title Number Naivasha/Mwichiringiri Block 4/230 (Mirera) addressed to the Applicant.

- ii. 45 days' redemption notice and notification of immovable property.
 - iii. Certificate of Service u/s (sic) of the auctioneer's rules.
 - iv. Notification of Sale of Immovable Property.
 - v. Statutory Notice u/s 90 (1), (2) and (3) of the Land Act 2012.
 - vi. Statutory Notice to Sale u/s 96 (2) (3) of the Land Act 2012.
20. That all these notices had been served to the parties by way of registered posts through their respective addresses. That indeed, the Applicant had executed the said documents voluntarily and had been identified by her National Identity Card Number 14628023. Interestingly, the Applicant had exhibited a charge instrument that intentionally omitted page 24 of the original charge, which contained the part she had executed, with a view to misleading the court into believing she never executed the charge.
21. That in any case, it was evident from other sources that the Applicant had been in default of facilities that had been advanced by other Banks wherein her properties had been sold by public auction. Further, a casual glance at the Applicant's signature in the Charge, Deed of Guarantee and Indemnity, Affidavit of Marital Status, and Cheque leaf clearly indicates that she had executed the said documents. She argued that, without any written document, the Applicant's allegations that she had entrusted the 3rd Defendant with her original documents, that is, title deed, transfer, I.D, PIN Certificate, and Passport size photograph, are absolute lies to the court, made on oath. Furthermore, the Applicant's allegation that she had been called by an officer of the 1st Respondent is false since she had not disclosed the name of the said 1st Respondent's official, from which telephone number and how the said official had come to know her telephone number.

22. That, indeed, the Applicant had not shown any action taken against the 3rd Defendant/Respondent after she had reported the matter to the police. She maintained that the Applicant had guaranteed the loan to the 2nd Respondent and executed the documents therefor, only to deny the same after realising that the 2nd Respondent had defaulted in servicing the same and that the 1st Respondent was in the process of realising the security. That the necessary provisions of the Land Act regarding the realisation of security had been complied with, as per the aforementioned notices.
23. That, in any event, the Applicant's denial of having executed the loan document was not supported by any firm and independent evidence, and thus remained a mere denial. Further, the Applicant had not produced any forensic report or handwriting expert opinion in support of her allegations disputing the attestation. She thus deposed that the Applicant/Plaintiff had not established a prima facie case with a high probability of success. That the Applicant would not suffer any irreparable loss if the suit property is sold, as the 1st Respondent, being a reputable bank, is able to compensate for any loss.
24. That indeed, the balance of convenience favours the 1st Respondent as it should not be blocked from exercising its lawful right based on some unproven allegations. That the allegation of forgery and non-execution was an afterthought and made in bad faith in an attempt to defeat the 1st Respondent's lawful statutory power of sale, since the same had only been made after the default and commencement of recovery proceedings.
25. She thus deposed that the Notice of Motion herein lacks merit and ought to be dismissed with costs.
26. The 2nd and 3rd Defendants/Respondents, on the other hand, in their Replying Affidavit dated 10th February 2026, sworn by Martin Miiri Karanja, the 3rd Defendant/Respondent herein, denied the Applicant's allegations of fraud, misrepresentation, collusion, or illegality, and the

Applicant's deposition that she never guaranteed the loan facility, as misleading. He stated that, sometime in 2022, the Applicant had voluntarily agreed to guarantee a loan facility advanced by the 1st Defendant to the 2nd Defendant, using Title No. Naivasha/Mwichiringiri Block 4/230 (Mirera) as security. That she had surrendered the original title document to facilitate the charge process.

27. That the Applicant had duly executed the charge instrument and presented identification information before an Advocate and was at all material times fully aware that the suit property was being used as security for the loan facility advanced to the 2nd Defendant. That he did not at any time obtain the Applicant's documents through deception, fraud, or misuse of trust as alleged. He argued that, to the extent that such allegations border on criminal conduct, they ought to be addressed before the appropriate criminal investigative and prosecutorial authorities.
28. That the loan facility was lawfully processed by the 1st Defendant after conducting its due diligence and verification procedures, including verification of ownership and execution of charge documents, thus the allegations of forgery are unsubstantiated and intended to defeat a lawful security instrument. He explained that the 2nd Respondent experienced temporary financial challenges, resulting in arrears on the loan facility, an issue currently being addressed in consultation with the 1st Respondent.
29. He contended that the Plaintiff's Application was premature, speculative, and made in bad faith, intended to defeat the rights of the Chargee under a lawful security. That no irreparable loss will be suffered as damages are quantifiable, and the property was voluntarily offered as collateral. The Applicant had approached the Court with unclean hands and had failed to disclose material facts; the instant Application is an abuse of the Court process and should be dismissed with costs.
30. In a rejoinder, the Plaintiff/Applicant in her Further Affidavit dated 2nd March 2026, argued that the Respondents' Replying Affidavits as filed

were unmeritorious, threadbare, incompetent, premature, misconceived, misguided, bad in Law, unwarranted hence the same should be dismissed with costs since they are tainted with contradictions, innuendos, malicious propaganda, blatant lies, untruths, misrepresentations and were only meant to prejudice the Court against her.

31. She deponed as follows in relation to the 1st Respondent's Replying Affidavit:

- i. That she never executed the offer letter as a guarantor as alleged.
- ii. That as per the letter of offer (annexure "MK-1"), it was clear that the directors of the 2nd Respondent had executed each page of the offer letter, and none of the said pages had her signature. She denounced the signature appearing as hers at the last execution page, stating that it was fabricated and differed from the signature on the other purported 1st Respondent documents.
- iii. The alleged offer letter indicates that it was executed before a Nairobi Advocate on 22nd August, 2022 yet she was not Nairobi on that day neither has she ever appeared before any such Advocate in Nairobi because she was at work in Naivasha at Maridadi Flowers located in Naivasha where she had received products that had been shipped in from Holland and took photos using her phone to show a colleague how she had labelled them and which photos had captured on her google pics showing that the same had been taken in Naivasha.
- iv. She was categorical that she had never heard of the 2nd Respondent and its Directors, who were complete strangers to her. She only heard of the loan on the 15th October, 2025, when she was called by one Gerald

Muendo, an official of the 1st Respondent, regarding the issue.

32. She thus contended that any purported transaction over her inherited property was fraudulent, initiated by the 2nd Respondent and/or its director(s) in collusion with the 3rd Respondent. Apart from the alibi raised, there ought to have been a chain of written communications and emails between the Bank and/or its lawyers on the one hand and her and/or her lawyers on the other, clearly showing how the transaction had commenced, the drafts shared for approval, and the approval, signing and witnessing by her lawyers. This was not the case in the instant matter. The Respondents would thus have the Court believe that she simply woke up one day and appeared at an Office in Nairobi, all the way from Naivasha, to sign documents without being accorded an opportunity for independent legal advice and without any correspondence indicating that a conveyancing transaction was in the offing.
33. She never received the alleged letters/notices annexed as “MK-3B, 3C, 4, 5, 6 and 7” addressed to Nairobi, as she does not live in Nairobi and has no Nairobi postal address. She asserted that she lives in Naivasha and that her postal address has always been 1215-20117, Naivasha. In any event, there was no certificate of postage confirming that the letters/notices had been dispatched to the alleged postal address. The two official postal addresses she has used in official documents all along are P. O. Box 1041—20117 and 1215-20117, Naivasha.
34. That the postal address listed as her postal address on the face of the 1st Respondent's documents was 18108-00100 Nairobi, which appears to belong to the 2nd Respondent. Thus, she wondered why she would share a postal address with the 2nd Defendant/Respondent, who was a complete stranger to her. Furthermore, the physical address of the 2nd Respondent appears as Kahawa West Plaza along Kamiti Road, Nairobi, yet she lives and works for gain in Naivasha within the Republic of Kenya.

35. She asserted that she had received a call from Gerald Muendo (0763 342273) on 15th October 2025 at 0957 hours. After the usual pleasantries, he had introduced himself as the 1st Respondent's official and enquired whether she had received a Notice of Outsourcing of an Auctioneer to auction her property. She had then made several panicked follow-up calls regarding the matter, which she would not have made had the news not caught her by surprise. Gerald then requested her email address, but she asked him to forward the Notice via WhatsApp and promised to share it there.
36. Gerald had also mentioned that he would send her the notice via WhatsApp and to her email, which he did from a different number (0725 342273), hence she had shared her email address with him. That if indeed it was a genuine transaction, the 1st Respondent would already have had her email address in their file and records. That thereafter, she had reported the matter at Naivasha Police Station and recorded a statement at the DCI Naivasha on 17th October 2025.
37. She argued that she had only annexed what had been shared with her by the 1st Respondent's Official, one Gerald Muendo, on the 15th October, 2025, via WhatsApp and the email address that she had provided him with on the same day.
38. The Applicant argues that the Bank's mention of her private romantic affairs was irrelevant to the suit and accused the Bank's lawyer of a conflict of interest and a breach of confidentiality for using information from a separate case involving her children's father to bolster a weak defence.
39. She denies ever signing the loan documents and points out that even a naked-eye comparison shows the signatures on the Letter of Offer and the Charge Instruments are visibly different from her own. She explains that she only gave her ID and her mother's title deed to the 3rd Respondent (as a confidant) to help transfer the title into her name. She cites a police statement from an advocate, Mary Mbugua, confirming that

the title was handed to the 3rd Respondent without the Applicant's knowledge, that police investigations into the matter were ongoing, and that she was awaiting the final report.

40. She further deposed that a Miscellaneous Application in CR Misc No. E192 of 2025 was initiated at the Naivasha Magistrates' Court regarding fraudulent transactions, as per annexure NWK-7, which shows a Court order dated 17th December, 2025 and the OB Police Extract. Given the circumstances of fraud, it was essential for the Court to preserve the Title of the property.
41. She then raised an objection, stating that the 3rd Respondent had not proven that he had the authority to speak on behalf of the 2nd Respondent and, therefore, the Company should be deemed to have failed to respond.
42. She argued that the 3rd Respondent colluded with the Bank and the Company to use her inherited property as security for a loan she knew nothing about, stating that she never saw the new title deed the 3rd Respondent obtained under the pretext of helping her with the succession process, only to use it behind her back to secure a loan.
43. The absence of any communication, such as emails, letters, or meetings, between her and the Bank proved that she was not involved. She also asserts that a legitimate loan is a long process, not a single-day event in which a stranger signs away property without legal advice. She questioned why she would give away her birthright, a property worth over Ksh 30 million, to benefit a company she had no connection to and was not even a director of.
44. She states that she received no financial benefit from the loan and characterises the Respondents' actions as unjust enrichment and fraud, grounded in her family's hard work. She denies having executed any documents in the presence of an advocate, as alleged by the 3rd Respondent, or having any financial agreement with the Respondents, and challenges the 3rd Respondent to produce one.

45. That the 3rd Respondent clearly knows the Company and its directors, wherein he had impliedly admitted the loan is in default, for which the Court should compel the Company to pay the debt without involving her as it was clear that the 3rd Respondent was trying to protect the Company from its debts. That the court should protect her interest in the property by granting her the Orders of a temporary injunction based on the strong case she had put forward.
46. The Application was disposed of through written submissions herein below summarised.

Plaintiff/Applicant's Submissions.

47. Vide her submissions dated 6th March 2026, the Plaintiff/Applicant summed up the factual background of the matter as well as the contents of her Supporting and Further Affidavits before framing her issues for determination as follows:
- i. Whether the Applicant is entitled to the injunctive reliefs sought; and
 - ii. Who bears the costs of the Application?
48. The Applicant contends that she has satisfied the three-step criteria established in **Giella v. Cassman Brown (1973)** and **Nguruman Limited v. Jan Bonde Nielsen & 2 others (2014) eKLR**, being that she has established a prima facie case with a probability of success, based on the fact that as the beneficial owner through inheritance, she never authorized the charge, never received loan funds, and never guaranteed any facility for the 2nd Respondent who was a stranger to her. There were significant discrepancies in the charge documents, including differences in her signature on the alleged documents, the use of a Nairobi postal address not belonging to her, and an alibi stating she was working in Naivasha on the date of the purported signing in Nairobi.

49. She placed reliance on the provisions of Section 90 (2) of the Land Act and the decided case of **East Africa Vantor Co. Ltd V Agricultural Finance Co-op Ltd & Another [2017] eKLR** to submit that there had been no compliance with Sections 90 and 96 of the Land Act more so the 90 days' statutory notice dated 25th April, 2024 which had no proof of service by way of a certificate of postage. No 40-day notice to sell was issued prior to the auctioneer's 45-day redemption notice. Reliance was placed on the decision in **M Z S V Gulf African Bank Limited & 2 Others [2015] eKLR**, to emphasize that forty (40) days would be in addition to the three (3) months' notice and different from the forty-five (45) days' Notification of Sale to be issued by an auctioneer. She submitted that these notices were mandatory and distinct hurdles that the Bank cannot skip.
50. On irreparable loss, she submitted that the suit property was a prime asset with an estimated value exceeding Ksh 30,000,000/=. She reiterated that whereas the provisions of Section 97(2) of the Land Act mandatorily require the 1st Respondent, as chargee, to obtain a current forced-sale valuation prior to exercising its statutory power of sale, the 1st Respondent had not placed any such valuation before the Honourable Court, thereby breaching its statutory duty and creating a real and imminent danger that the property may be sold at a gross undervalue, in violation of the provisions of Section 97(1) of the Land Act. Furthermore, the Applicant would be deprived of her right to inherited and sentimental property, as enshrined under Article 40 of the Constitution of Kenya 2010. She relied on the decided case of **Niaz Mohammed Janmohammed v Commissioner for Lands & 4 Others (1996) eKLR** to submit that damages could never be sufficient or adequate compensation for the violation of a right.
51. She submitted that the acts complained of were a clear breach of the law and threatened a violation of her right to her property, which was a birthright and a labour of love passed down from her late mother, and

thus sentimental in nature. She thus urged the Honourable Court not to permit the illegality which would enable the Respondents to illegally deprive her of the suit property.

52. Lastly, she submitted that the balance of convenience tilted in favour of preserving the status quo until the determination of the truth of the fraud allegations at trial. She relied on the decision in **Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 Others [2016] eKLR**.

53. She sought costs following the principle that “costs follow the event.”

1st Defendant/Respondent’s Submissions

54. The 1st Defendant/Respondent vide its undated submissions summarized the factual background of the matter and reiterated the Grounds of Application and both the 1st and 3rd Defendant/Respondent’s Replying Affidavit verbatim and then framed one (1) issue for determination to wit; whether the 1st Defendant/Respondent should be restrained by way of an injunction from exercising its statutory power of sale by way of sale of title No. Naivasha/Mwichiringiri Block 4/230 (Mirera).

55. The Bank argued that the Applicant had failed to meet the first limb of the **Giella v. Cassman Brown** test for several reasons, being that all statutory notices under Sections 90 and 96 of the Land Act were duly issued and served via registered post to the address provided in the charge instrument. It Bank characterised the allegations of forgery as bare and an afterthought and argued that the Applicant had provided no forensic or expert handwriting evidence to prove the signatures were not hers.

56. Citing **Kinyanjui Kamau v. George Kamau [2015], eKLR**, the Bank emphasized that the standard of proof for fraud or forgery was higher than the ordinary balance of probabilities and accused the Applicant of

dirty tricks and misleading the court by exhibiting a version of the charge instrument that intentionally omitted the execution page. Citing the **Nguruman Limited's case (supra)**, it submitted that since no prima facie case had been established, the court need not consider irreparable injury or balance of convenience.

57. That the signed Cheque leaf from the Applicant herein annexed proved that the signature matched those on the disputed loan documents. Furthermore, the annexed advertisement for sale and/or certificates for sale of other properties owned by the Applicant by other banks also demonstrated that the Applicant was a party in financial distress. It was thus its submission that the instant Application is an abuse of the court process intended to fetter it from exercising/seeking a legal remedy.
58. On irreparable damage, it submitted that the injury the Applicant was likely to suffer is compensable, since the 1st Defendant is a financial institution capable of paying compensation. It relied on the decision in **Andrew Muriuki Wanjohi v Equity Building Society Ltd**,(sic) where it had been held that once land was held as security, it became a commodity for sale, and its loss could be compensated by damages. As a reputable financial institution, the Bank asserted its ability to pay any damages awarded if the Applicant ultimately wins the main suit.
59. Finally, on the issue of the balance of convenience, the 1st Respondent maintained that the same tilted in its favor. The 2nd and 3rd Respondents had both admitted the existence of the loan and the ongoing default, and therefore a lender's right to realise its security should not be fettered when default is admitted. Citing the case in **Joseph Siro Mosioma v. Housing Finance Co. of Kenya [2008]** (sic), the Bank argued that an injunction would prevent it from exercising its contractual rights while interest continued to accrue, causing it financial loss. That the application was a fishing expedition and an abuse of the court process intended to delay the lawful recovery of a debt. They urged the court to dismiss the Notice of Motion with costs.

Determination

60. The issue for determination by this court is whether the Plaintiff/Applicant, in her application seeking temporary injunctive orders against the Defendants/Respondents, should be allowed as against the 1st Defendant/Respondent's opposition that a lender's right to realise its security should not be fettered.
61. The principles to be considered by this court in determining whether or not to grant the interlocutory injunction sought are well settled in the case of **Giella vs. Cassman Brown [1973] EA 358** which sets out the conditions that the Applicant needs to satisfy for the grant of an interlocutory injunction. At this stage, the Court is only required to determine whether the Applicant is deserving of the interim injunctive orders sought. The Court is not required to determine the merit of the case.
62. I have considered all the material facts placed before me and find that the Applicants' main ground for seeking interim orders against the Respondents was centred on allegations of fraud, procedural illegality, and the unique nature of the property. She contended that the entire loan transaction was a criminal enterprise in which her acquaintance, the 3rd Respondent, obtained her ID and the original Title Deed to Naivasha/Mwichiringiri Block 4/230 (Mirera) under the false pretext of helping her with a succession transfer, and then used them to secure a loan for the 2nd Respondent, a company she did not know. She denied having signed the Letter of Offer, the Charge Instrument, or the Guarantee.
63. She asserted that, despite this, the 1st Respondent failed to follow the procedures laid down in the Land Act (2012). The Bank's statutory power of sale had not crystallised because the wrong address had been used, and there were no notices or proof of postage. She argued that the loss of the property could not be compensated by money (damages) because it was an ancestral birthright and at risk of undervaluation. She maintained

that her case was not frivolous and met the legal threshold for an injunction.

64. The 1st Respondent's response was that the loan was a legitimate commercial transaction and that the Applicant was attempting to evade a lawful debt after a default. The Bank asserted that the security documents are legally binding and properly executed, emphasising that a Letter of Offer, Charge, and Guarantee were all executed in the presence of a qualified Advocate, thereby creating a legal presumption that the person signed voluntarily and understood the implications. A comparison of the Applicant's signature on a cheque leaf and on the disputed loan documents confirmed a match, even to the naked eye.

65. They argue that all required notices (90-day, 40-day, and 45-day) were sent by registered post to the address provided in the Charge Instrument and since both the 2nd and 3rd Respondents (the borrowers) had openly admitted that the loan existed and was in default, the Bank's statutory power of sale had been triggered. The 1st Respondent's submission was that the Applicant had failed the **Giella v. Cassman Brown** test required for a court to stop the sale.

66. The **Giella vs Cassman Brown [1973] EA 358** case sets out conditions for the grant of an interlocutory injunction as follows: -

- i. Is there a serious issue to be tried (prima facie case)?
- ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
- iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").

67. On the first issue as to whether the Plaintiff/Applicant in the instant matter has made out a prima facie case with a probability of success, I am guided by the case of **Mrao vs First American Bank of Kenya**

Limited & 2 Others (2003) KLR 125, where a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

68. On the first issue, I find that the Applicant presented several strong points that suggest a serious issue to be tried, by providing an alibi placing her in Naivasha on the day the documents were purportedly signed in Nairobi, I believe this is an issue to be tried on whether the execution of the documents was invalid.
69. The Applicant also points out that the Bank used a Nairobi address belonging to the borrower, not her known Naivasha address and therefore the 90-day and 40-day notices were not properly served upon her; thereby invalidating the Bank’s power of sale, which she claims has not legally crystallised.
70. While the fraud/forgery allegations are mere allegations at this stage, the reporting of the matter to the DCI (OB 25/17/10/2025) and the existence of a Magistrate’s Court case in CR Misc No. E192 of 2025 shows that these were not just bare denials but active criminal investigations.
71. The Bank, on the other hand, has raised significant hurdles for the Applicant to the effect that the standard of proof on fraud must be on a higher standard than the balance of probabilities, for which the Applicant has not provided a forensic document examiner’s report to confirm the forgery. Secondly, because an Advocate witnessed the signing, the law presumes that everything was done correctly, and the burden of proof shifts heavily to the Applicant to rebut this presumption. Lastly, a signed

cheque leaf matches the loan documents, which complicates the Applicant's claim of forgery.

72. While the Bank correctly argues that forgery must be proven by expert evidence at trial, the Applicant has provided a compelling alibi that she was in Naivasha at work on the date the documents were purportedly executed in Nairobi. Furthermore, the active criminal investigation (OB 25/17/10/2025) suggests these claims are not merely frivolous.
73. Under Sections 90 and 96 of the Land Act, a chargee must serve specific notices. The Applicant contends these were sent to a Nairobi address belonging to the borrower, despite her being a resident of Naivasha. The Bank failed to produce a Certificate of Postage to prove service to the Applicant's known address. This procedural lapse, if proven, would render the intended sale illegal.
74. Having taken the above issues into consideration and noting that at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties' cases as observed by Lord Diplock in **American Cyanamid Co. vs Ethicon Limited (1975) 1 ALL ER 504; (1975) A.C. 396 HL at 510** where he stated as follows:

"It is no part of the Court's function at this stage of the litigation to try and resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."

75. Since Courts are often hesitant to allow an auction to proceed if there is a credible allegation of fraud and a clear breach of statutory notice procedures, and instead preserve the property until these serious allegations can be tested in a full trial where witnesses can be cross-examined, I find that the Applicant has surmounted the first hurdle.

76. On the second issue for determination on irreparable Injury, while the 1st Respondent argues that land is a commodity and loss is compensable by damages. However, this Court notes that the suit property was an inherited birthright from the Applicant's late mother, where it is increasingly recognised that land, especially that which carries sentimental or ancestral value, cannot be easily replaced by a monetary award. If the property is sold to a third party, the loss would be permanent and irreversible, regardless of the outcome of the main suit. On this aspect, I also find in favour of the Applicant.

77. Indeed, the Court of Appeal in the **Nguruman Limited v. Jan Bonde Nielsen & 2 others (2014) eKLR** had held as follows:

"..... An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.

.....the court must further be satisfied that the injury the Respondent will suffer in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying no interlocutory order of injunction should normally be granted however strong the Applicant's claim may appear at that stage."

78. The Court of Appeal had held that for an applicant to suffer irreparable injury, it did not require the injury to be physically incapable of repair. Rather, the injury must be material and one that cannot be adequately remedied by damages. The court must be satisfied that the Applicant's claim is not capable of being quantified. In the present case, the Applicant has argued that the loss of the property could not be compensated in

money (damages) because it was an ancestral birthright. I find that indeed an ancestral birthright cannot be compensated with damages.

79. Lastly, on balance of convenience, the court in the case of **Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] eKLR** observed as follows;

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right.

[17] The burden of proof that the inconvenience which the applicant will suffer if the injunction is refused is greater than that which the respondent will suffer if it is granted lies on the applicant.

[18] Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies.”

80. Having considered the circumstances of this case, I find that the balance of convenience tilts in favour of preserving the status quo because if the injunction is granted, the Bank suffers a delay in recovering its money, a loss that can be mitigated by interest. If the injunction is

denied and the property sold, but the Applicant later proves forgery, she will have lost her inheritance forever.

81. In the end, having considered the rival submissions and the law, the Court finds that the Applicant's Motion dated 30th October, 2025 is merited.

- i. An Interlocutory Injunction is hereby issued restraining the 1st Defendant/Respondent, whether by itself, its auctioneers, or agents, from selling, advertising, or in any way interfering with Title Number: Naivasha/Mwichiringiri Block 4/230 (Mirera) pending the hearing and determination of the main suit.
- ii. The parties are directed to comply with Order 11 of the Civil Procedure Rules within 30 days to allow for an expedited trial on the merits of the fraud allegations.
- iii. Costs of this application shall be in the cause.

**Dated and delivered via Microsoft Teams at Naivasha this 7th day of May
2026**

M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE