



Sheet & Metal Works Limited v Absa Bank Kenya & another (Commercial Suit E551 of 2025) [2026] KEHC 6182 (KLR) (Commercial and Tax) (7 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E551 OF 2025**

BK NJOROGE, J

MAY 7, 2026

BETWEEN

SHEET & METAL WORKS LIMITED PLAINTIFF

AND

ABSA BANK KENYA 1ST DEFENDANT

MULONDO & CO ADVOCATES 2ND DEFENDANT

RULING

1. This is a Ruling in respect to the Plaintiff/Applicant's application by way of a Notice of Motion dated 22nd August, 2025 seeking an injunction.

Background Facts

2. The Applicant filed the Notice of Motion dated 22nd August 2025 seeking the following orders;
 1. Spent.
 2. Spent.
 3. That a temporary injunction be issued against the Respondent restraining it from entering any private or scheme settlement and which involves alienating, of selling or advertising or offering for sale, transferring, laying claim to, trespassing onto and/or in any other manner dealing or interfering with the Applicant's peaceful occupation and title to Land Reference No NAIROBI/BLOCK 251/9 and NAIROBI/BLOCK 251/10 pending hearing of this suit.
 4. That the Respondents be compelled to provide a true and accurate statement of account for the loan facility and valid redemption amount.



5. A declaration that the debt collection fees of KES 4,290,164.19 demanded by the 2nd Defendant are unlawful, unconscionable, and not payable by the Plaintiff.
 6. An order compelling the 1st Defendant to facilitate the smooth takeover of the Plaintiff's loan facilities by Cooperative Bank of Kenya without any delay or obstruction
 7. Costs of this application be provided for.
3. The Application was supported by the Affidavit of ANTONY MBAU GITICHE. He deponed that the Applicant is the registered proprietor of Land Reference Nos. Nairobi/Block 251/9 and Nairobi/Block 251/10 (the suit properties). They were charged in favour of the 1st Respondent to secure a loan facility of KShs. 37,150,429.20. The Applicant also obtained an additional loan of KShs. 14,934,994 under Asifiwe Bakers, with agreed monthly repayments of KShs. 598,270.62 and KShs. 332,245.84 respectively.
 4. The Applicant averred that there has been no default in servicing these facilities, and that the statutory notices issued by the 1st Respondent through the 2nd Respondent are unlawful, having been sent to an outdated address despite the Respondents being in possession of the Applicant's current contact details.
 5. Due to loss of trust, the Applicant sought a loan takeover by Co-operative Bank, but the process has been frustrated by the Respondents' demand for Kshs. 4,290,164.19 as alleged debt recovery fees, which the Applicant contends are illegal and have clogged the equity of redemption. The takeover offer, valid until 5th September 2025, risks lapsing due to these impediments.
 6. The Applicant maintained that any alleged default is disputed and that a proper account would reveal no basis for the intended sale. It is further contended that the threatened auction is unlawful and would occasion irreparable loss, warranting the grant of orders to stay any recovery actions pending reconciliation of accounts and completion of the loan takeover process.
 7. In response, the Respondents filed the Replying Affidavit sworn on 11th September 2025 and Grounds of Opposition dated 3rd September 2025 on the following grounds;
 - a. The Defendants issued the Plaintiff with a 90 days statutory notice and a 40 days' notice to sell via registered post to the postal address provided by the Plaintiff in the loan application documents as required by the law and as per clause 42 of the Charge instrument.
 - b. The Plaintiff's properties titles number Nairobi/Block 251/9 and Nairobi/Block 251/10 are not in danger of sale as all the requisite notices are yet to be issued.
 - c. The injunctive orders sought by the Plaintiff are premature as the suit properties have not been advertised for sale neither has the 1st Defendant entered into any scheme for sale by private treaty.
 - d. The Plaintiff's application is seeking final orders which should not be granted at this preliminary stage.
 - e. The loan advanced to the Plaintiff is still in arrears and the 1st Defendant's Chargee's statutory power of sale has crystallized.
 - f. The Plaintiff's application lacks merit and it ought to be dismissed with costs.
 8. In its Replying Affidavit, the Respondents contended that the Plaintiff defaulted on the loan by making irregular and insufficient payments, thereby attracting both normal and default interest at



a rate of 27% per annum. As a result of this default, the 1st Defendant's statutory power of sale crystallized, prompting the issuance of the requisite statutory notices through the 2nd Defendant. A 90-day notice dated 24th January 2025 was issued demanding settlement of arrears amounting to KShs. 35,925,509.25, followed by a 40-day notice to sell dated 29th April 2025 when the arrears had risen to KShs. 36,966,932.70. These notices were properly served via registered post to the Plaintiff's last known address in accordance with the law and the terms of the Charge. That the Plaintiff's assertion of non-default is false and misleading.

9. The Defendants further stated that the loan remains in arrears. The outstanding amounts of Kshs. 36,682,688.25 and Kshs. 12,911,633.15 on the respective facilities as at September 2025, continue to accrue interest. The debt recovery fees of Kshs. 4,290,164.19 are lawfully due, having arisen from recovery efforts necessitated by the Plaintiff's default. That the Plaintiff's failure to settle these fees has delayed the proposed loan takeover by Co-operative Bank.
10. The Defendants denied any illegality or impropriety in the recovery process. They maintain that they have complied with all statutory requirements. That any loss the Plaintiff may suffer is self-inflicted, as it is settled law that charged property is liable to sale upon default.

Issues for determination

11. Having carefully considered the Application, the responses therewith as well as the written submissions by the parties, the Court frames the following issue for determination;
 - a. Whether an injunction order should issue.

Analysis

12. The conditions to be fulfilled in order to obtain orders of temporary injunction were explained in the case of *Giella v Cassman Brown & Co. Ltd (1973) E.A 385*, as follows: -

"The conditions for the grant of an interlocutory injunction are ...well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

13. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125*, the Court explained what amounts to a prima facie case as follows: -

"...So what is a prima facie case? I would say that in civil cases it is a case in 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...a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case."

14. Has the Applicant established a prima facie case? The Applicant argued that it has demonstrated the existence of a loan takeover proposal from Co-operative Bank of Kenya. That this takeover would facilitate full settlement of the outstanding amount owed to the 1st Respondent. Notably, the Respondents have admitted to withholding the official documents necessary to complete the takeover,



thereby frustrating the process. They have failed to offer any credible or plausible explanation for why the proposed loan takeover has not materialized.

15. In submission, the Respondent reiterated that the Plaintiff has not repaid the loan and is therefore undeserving of the orders it seeks. In any case, this suit and the present application are premature as the suit properties are not in danger of being sold as the Defendants have only issued the 90-day and 40-day notices. The 45-day redemption notice is yet to be issued and the property has not even been valued as required.
16. Notably, the Applicant, in its Supporting Affidavit, despite stating that notices were not served upon it correctly, acknowledged receipt of the 40-day notice to sell dated 29th April 2025. What comes out clearly is that the suit properties are not in danger of being sold. If anything, the 45-day redemption notice is yet to be issued.
17. From the foregoing, it is this Court's finding that the Plaintiff has not established a prima facie case against the Defendant. The Plaintiff has not demonstrated in what way the intended sale is illegal, more so in light of the overwhelming evidence of statutory compliance on the Defendant's part. That the Plaintiff is in default which has triggered the recovery of the loan is not in dispute. The Plaintiff owns up that it has move to secure a takeover of the loan as it is in default.
18. Having failed the first test, there is no need to consider the other two limbs of *Giella v Cassman Brown* (supra). In any event, there is an offer for the Co-operative Bank to take over the loan and to settle the entire loan in full. It is the Court's considered view that the Applicant should pursue this option before the 45-day redemption notice is issued.
19. The upshot is that the Application is unmeritorious and is dismissed.

Determination

20. The Plaintiff/Applicant's Application by way of a Notice of Motion dated 22nd August 2025 is Hereby dismissed for lack of merits.
21. The costs of the application are awarded to the Respondents.
22. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 07TH DAY OF MAY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Mr. Gachuri for the Plaintiff/Applicant.

Miss Njiru for the Defendant/Respondent.

Mr. John Paul - Court Assistant.

