



**Banking Insurance and Finance Union (Kenya) v National Bank of Kenya Ltd
(Cause 846 of 2014) [2025] KEELRC 30 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 30 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 846 OF 2014
HS WASILWA & HS WASILWA, JJ
JANUARY 20, 2025**

BETWEEN

BANKING INSURANCE AND FINANCE UNION (KENYA) APPLICANT

AND

NATIONAL BANK OF KENYA LTD RESPONDENT

RULING

1. The Claimant/Applicant, Janet Patricia Minai, filed an application dated 18th September 2024 seeking urgent orders to restrain the Respondent from alienating, selling, or otherwise interfering with her property, L.R. Ngong/Ngong/55765, located in Matasia, Kajiado county. The property serves as her matrimonial home and was purchased through a staff loan obtained during her employment with the Respondent.
2. The Applicant asserts that her dismissal on 30th April 2014 was unlawful, a position upheld in a judgment delivered by Lady Justice Maureen Onyango on 21st February 2020. Despite this, execution of the judgment has been stayed, and the matter is pending determination in Civil Appeal No. 205 of 2021. The Applicant received a default loan notice on 22nd July 2024, with the Respondent threatening to sell the property by public auction on 25th September 2024.
3. The Applicant contends that the Respondent has acted in bad faith by attempting to sell the property despite being aware of the ongoing appeal and the property's status as her family home. She further alleges that the Respondent has failed to provide a detailed breakdown of the outstanding loan balance and interest. The Applicant fears irreparable loss if the sale proceeds and argues that the Respondent will not suffer prejudice if the orders sought are granted.
4. The application is brought under urgency, seeking interim orders to preserve the property until the pending appeal is determined.



Applicant's written submissions

5. The Claimant/Applicant filed a Notice of Motion dated 18th September 2024, supported by an affidavit sworn by Isaiah Munoru Mucheke, seeking interim orders to restrain the Respondent from selling or transferring the property Ngong/Ngong/55765/Matasia/Kajiado county, owned by Janet Patricia Minai. The orders were sought pending the hearing of the application inter partes and the determination of an appeal in Civil Appeal No. 205 of 2021. Additionally, the Applicant requested a breakdown of the monthly loan installments and interest charged at staff rates.
6. Faced with the imminent auction of the property on 25th September 2024, the Applicant filed an urgent Notice of Motion on 24th September 2024, supported by Tom O. Odero's affidavit, seeking restraining orders. The Court granted interim orders to preserve the property pending the inter partes hearing. The Respondent opposed the application, arguing that the Court lacked jurisdiction as it was functus officio. They also submitted evidence of statutory and redemption notices allegedly issued to the Grievant.
7. The Applicant argued that the property is a matrimonial home and its loss would irreparably harm the family. They contested the validity of statutory notices and redemption procedures, alleging non-compliance with statutory requirements under the Land Act. Further, the interest and penalties on the loan were alleged to be inflated and unjust. The Respondent, enjoying a stay of execution granted by the Court of Appeal, sought to recover the loan by auctioning the property despite the unresolved appeal.
8. The application raises critical issues, including whether the Applicant has established a prima facie case for injunctive relief under the principles set out in *Giella v. Cassman Brown* [1973] EA 358 and reiterated in *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR. The Court must also consider whether irreparable harm would result if the injunction is not granted and where the balance of convenience lies.
9. The Applicant submitted that their property rights under the Land Registration Act, 2012, are indefeasible and that the Respondent failed to comply with statutory notice requirements, rendering the auction process irregular. They further contended that the Court retained jurisdiction to address matters arising from the employment relationship, including preferential loan rates, as previously determined in *Banking Insurance and Finance Union Kenya v. Consolidated Bank of Kenya Limited* [2020] KEELRC 1225.
10. In conclusion, the Applicant urged the Court to grant injunctive relief to preserve the property pending the determination of the appeal, emphasizing the balance of convenience and the potential irreparable harm to the family if the property is auctioned. The Respondent's grounds of opposition centered on jurisdictional challenges and their position that the Court was functus officio, relying on cases such as *Telkom Kenya Limited v. John Ochanda* [2014] eKLR. However, the Applicant distinguished these arguments, maintaining that the current application pertains to the preservation of rights pending the outcome of the appeal rather than revisiting substantive issues.
11. An affidavit sworn on 18th September 2024 by Isaiah Munoru Mucheke, the National Organising Secretary of the Claimant/Applicant union, is submitted in support of the application seeking to restrain the Respondent from proceeding with the sale of the property belonging to the grievant, Janet Patricia Minai.



Facts of the Case:

12. The Claimant is a registered trade union representing unionisable employees in the banking sector, while the Respondent is a banking institution operating under the *Banking Act*.
13. The grievant, an employee of the Respondent, was terminated on 30th April 2014, alongside 23 others. The matter was litigated under ELRC Cause No. 846 of 2014, where the court declared the termination unfair and unlawful on 21st February 2020. Compensation of 12 months' salary was awarded to the grievants.
14. The Respondent appealed this decision (Civil Appeal No. 205 of 2021) and obtained a stay of execution.

Loan Facility and Suit Property:

15. The grievant had secured a staff loan tied to property L.R. No. Ngong/Ngong/55675, her matrimonial home. The loan arose from her employment relationship with the Respondent.
16. The grievant's termination made it impossible for her to service the loan, leading to the issuance of a redemption notice and advertisement for public auction of the property scheduled for 25th September 2024.
17. The affidavit cites the decision in *Boniface Karau v First Community Bank & Takaful Insurance of Africa* [2020] eKLR, affirming the court's jurisdiction to address employment-related loan disputes.
18. It references *Ngamate Wandongu v Esther Njoki Kibunja* [2013] eKLR, emphasizing the need for a prima facie case for injunctive relief, and *Abraham Nyambane v Barclays Bank of Kenya Ltd* [2013] eKLR, highlighting the irreparable harm caused by losing a matrimonial home acquired through an employment benefit.
19. The Claimant argues that the Respondent's actions are unjust, as the grievant's inability to repay the loan stems from her unfair termination, which is the subject of a pending appeal.
20. The sale of the property would render the grievant and her family homeless, causing irreparable harm that cannot be compensated by damages.
21. The Claimant seeks orders restraining the Respondent from proceeding with the auction, arguing that the application demonstrates a prima facie case with high chances of success.
22. The affidavit emphasizes that the matter is urgent, and the Respondent should be restrained from taking precipitate action pending the determination of the appeal in the interests of justice and equity.

Respondent's Case

23. In an affidavit dated 12th November 2024, Catherine N. Kamau, a female adult employed by the Respondent Bank as the Remedial & Recoveries Analyst in the Credit Division, stated that she is competent to swear the affidavit on behalf of the Respondent. She indicated that her statements are based on her personal knowledge or information obtained from the Respondent's Advocates, Oraro & Company Advocates, which she verily believes to be true.
24. She read and her Advocates explained to her the Claimant's Notice of Motion applications dated 18th September 2024 and 24th September 2024, supported by affidavits of Isaiah Munoru Mucheke and Tom O. Odero, and responded in opposition. She asserted that the injunction application is baseless as it is not anchored on the pleadings filed in the substantive suit. She referred to rulings delivered on 13th



April 2018 and 14th June 2019 in related applications by Donald Mungoma Mtana and David Ndungu Maina, which were dismissed by the court.

25. She referenced the Claimant's amended Memoranda of Claim filed on 23rd October 2015 and 1st August 2017. The earlier pleading sought orders against the sale of grievants' properties, but these prayers were deleted in the latter amendment. She noted the court's ruling on 13th April 2018 rightly found the issue unpleaded. She asserted that the court is functus officio, as it delivered judgment on 21st February 2020, which the Claimant acknowledges. She stated that the stay referred to in the affidavit of Isaiah Munoru pertains only to the execution of the judgment, not the sale of grievants' properties.
26. She denied the allegations in paragraphs 8 to 19 of the affidavit of Isaiah Munoru. Following the grievant's termination on 30th April 2014, the loan facilities fell into default, prompting recovery measures. These included a statutory notice issued on 20th August 2015, a notice of intention to sell on 15th February 2016, and two redemption notices, the latest scheduling an auction for 25th September 2024. Copies of these notices were attached to her affidavit. She stated that despite these notices, the grievant failed to repay the debt or present proposals for repayment.
27. She emphasized that the Respondent has followed proper legal procedures in recovering the outstanding loan, which continues to accrue interest. The Claimant initially pleaded for a blanket order concerning the grievants' properties in October 2015, but related applications were dismissed, and the prayers were deleted in August 2017. The grievant has not denied her indebtedness or contested the legality of the recovery process.
28. She concluded by opposing the Claimant's application, asserting that the Respondent has acted within the law, and prayed that the application be dismissed with costs.

Respondent's written submissions

29. In written submissions dated 26th November 2024, the Respondent opposed the Claimant/Applicant's applications dated 18th September 2024 and 24th September 2024. These applications were filed on behalf of one of the grievants, Janet Patricia Minai, and sought, among other orders, an injunction restraining the Respondent from interfering with her property at LR No. Ngong/Ngong/55765 pending the determination of Civil Appeal No. 205 of 2021, and a breakdown of monthly loan installments plus interest at staff rates.
30. The Respondent relied on its Grounds of Opposition dated 2nd October 2024 and a Replying Affidavit sworn on 12th November 2024 by Catherine N. Kamau. The Respondent argued that the Court lacked jurisdiction to entertain the applications, as it was functus officio, having rendered a judgment in the matter on 21st February 2020. The Respondent cited *John Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR, where the Court of Appeal held that functus officio prevents a court from revisiting a matter on a merit-based approach once judgment has been delivered. In *Telkom Kenya Ltd v John Ochanda* (suing on behalf of 996 former employees), the Court clarified that a court cannot reengage with a case after final judgment unless under specific exceptions.
31. The Respondent submitted that the applications sought to re-open matters already decided and currently under appeal before the Court of Appeal. Further, the Claimant failed to disclose material facts, including that a similar application filed on 25th June 2016 had been declined by the Court. The Respondent asserted that the Grievant was aware of her indebtedness since 2015 and had been given opportunities to repay the loan but had failed to do so, necessitating the sale of her property.
32. The Respondent cited *Emma Wanjiru Ndiguri & Another v Equity Bank Kenya Ltd* [2021] eKLR, emphasizing the duty of candor required of parties seeking ex parte injunctive relief. The Court in this



case reiterated that parties must act with utmost good faith and disclose all material facts. The Court also referred to Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 Others, where it was held that failure to disclose material facts disqualifies a party from equitable relief.

33. Additionally, the Respondent relied on several decisions where similar applications for injunctive relief against the Respondent had been declined. These included Banking Insurance and Finance Union v National Bank of Kenya Limited [2016] eKLR by Justice Nduma Mathews, who declined injunctions against the sale of properties of Phyllis Nicole Okwiri and Andrew Kiptoo Kotut. Justice Radido Stephen in Banking Insurance and Finance Union v National Bank of Kenya Limited [2018] eKLR declined an injunction for Donald Mungoma Mtana's property. Other cases cited included Alfred Muthomi Mutiria & 2 Others v National Bank of Kenya Limited [2016] eKLR, Peter Mutisya Musembi & Another v National Bank of Kenya Limited [2015] eKLR, and Peter Mutisya Musembi & Another v National Bank of Kenya Limited [2016] eKLR.
34. The Respondent argued that the balance of convenience tilted in its favor, as the Claimant had not established a prima facie case or demonstrated irreparable harm that could not be compensated by damages. The Respondent therefore urged the Court to dismiss the applications with costs.
35. I have examined the averments and submissions of the parties herein. The applicant seeks stay of sale of her property Ngong/Ngong/55765 in Matasia indicating that it is her matrimonial home and was purchased through a staff loan obtained during her employment with the respondent.
36. She has averred that this Court already delivered a judgment on 21/2/2020 declaring her dismissal was unlawful. Execution was then stayed and matter is pending determination before the Court of Appeal in [*CA No 205 of 2021*](#).
37. The respondent is indeed aware that the matter is pending before the Court of Appeal and the respondent's attempt to sell the applicant's land when the appeal is pending is indeed an act of bad faith.
38. In determining whether to grant or not grant the application sought, I note that a sale of the property of the applicant will indeed prejudice her if the appeal is determined in her favour. The sale will also render the pending appeal nugatory if rendered in applicant's favour. It is for this reason that I find the application is merited and I allow stay of sale of applicant's land pending determination of the appeal pending before the Court of Appeal.
39. Costs in the Cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF JANUARY, 2025.

HELLEN WASILWA

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of [*the Constitution*](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of [*the Constitution*](#) and the provisions of



Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

