



REPUBLIC OF KENYA



Globe Autospares and Accessories Limited v Housing Finance Limited & another (Civil Case E860 of 2021) [2025] KEHC 4058 (KLR) (Commercial and Tax) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E860 OF 2021
F GIKONYO, J
MARCH 27, 2025**

BETWEEN

GLOBE AUTOSPARES AND ACCESSORIES LIMITED PLAINTIFF

AND

HOUSING FINANCE LIMITED 1ST DEFENDANT

BENJAMIN K SILA T/A LEGACY AUCTIONEERING

SERVICES 2ND DEFENDANT

RULING

Interim measure of relief

1. Is the plaintiff entitled interim reliefs pending the hearing and determination of its motion dated 14th February 2025?
2. Prayer 2 of the said motion seeks a temporary order of injunction restraining the defendants whether by themselves, their employees, servants, agents or auctioneers from taking possession, leasing, charging, further sale, disposition or otherwise interfering with the plaintiff's ownership and possession of all that land known as Kiambu/Municipality Block 11/243 situate in Kiambu County (the subject property).
3. When the matter was mentioned on 6th March 2025, Mr. King'ara, urged the Court to grant the interim order. However, Mr. Kimani for the defendants was against granting interim relief before hearing of the parties.
4. The threshold for grant of temporary injunction is to prevent an injustice from occurring out of actions or matters complained, whilst seeking to establish elements stated in *Giella v Cassman Brown & Co Ltd*, (1973) E.A 385 on whether the applicant has established a prima facie case with a probability



- of success; the applicant might otherwise irreparable injury, which an award of damages would not adequately compensate; and if the court is in doubt, where does the balance of convenience lie?
5. See also *Nguruman Limited v Jan Bonde Nielsen & 2 others* (Civil Appeal No. 77 of 2012) [2014] eKLR
 6. On prima facie case; the plaintiff claims that the defendant bank failed to record the monthly instalments paid and failed to determine when the loan facility became non-performing; inflated the balance; lumped up illegal payments to clog its equity of redemption; including life and fire insurance premiums; appointed Crystal Valuers Ltd as receivers over the charged property without compliance with Section 92 of the *Land Act*; collected rent for 2018 to 2021 without accurate records; failed to furnish the plaintiff with accounts.
 7. The plaintiff also claims that the defendant bank exercised its statutory power of sale while still collecting rent contrary to section 90(3) of the *Land Act*; sold the charged property without obtaining leave of court under Section 100 of the *Land Act* and at a gross undervalue for Kshs. 143,000,000/- against the worth of Kshs. 270,000,000/- at the time of sale; tried to evict tenants causing a part of the building to be razed down by fire.
 8. The defendant bank posited that the application is res judicata and is meant to delay the hearing. It also pointed out that the plaintiff admitted that it guaranteed the Kshs. 100,000,000/- and that the loan became non-performing due to the borrower's mental incapacitation. It also stated that the plaintiff was aware of the default position of the facility but failed to regularize. The receivership was terminated on 30th January 2019 as the rent failed to meet the targets. It also highlighted that the charged property was sold by public auction on 2nd March 2021 in the exercise of the 1st respondent's statutory power of sale.
 9. It is not disputed that the plaintiff offered the subject property to secure a Kshs. 100,000,000/- loan issued by the defendant bank to Hannah Wairimu Mutura. The charged property was sold by public auction on 2nd March 2021 in the exercise of the 1st respondent's statutory power of sale. I note from the record that the plaintiff previously filed a similar application dated 14th October 2021 disposed through the ruling of 21st July 2022. The application was brought after the auction sale. In the first ruling, Justice Chepkwony' granted an injunction to restrain the defendant from further subdividing, registering or changing registration in ownership of the charged property and to maintain the status quo pending the determination of the dispute through arbitration. Through a subsequent ruling of 14th June 2023, Justice Chepkwony' set aside the earlier orders as they were based on the erroneous notion that the matter was pending arbitration yet the matter had been marked not suitable for mediation during screening on 24th March 2022.
 10. The injunction sought through the present application is meant to prevent the clogging of the equity of redemption. However, the property has been sold through public auction. The propriety or otherwise of the said public auction should be unravelled in the trial. The purpose of a temporary injunction is to prevent an event from taking place. If the event has happened, an order of temporary injunction is not feasible or appropriate remedy. See *Kakoka v Ong'udi & 2 others* (Civil Appeal E063 of 2022) [2023] KEHC 4046 (KLR) (4 May 2023) (Ruling), *Muyumba Watita & 51 Others v Joannes Satia & 4 others* [2020] eKLR and *Eric V. J. Makokha & 4 Others v Lawrence Sagini & 2 others* (Civil Application No. 20 of 1994) (12/94 UR).
 11. Therefore, I decline to grant prayer 2 of the plaintiff's motion dated 14th February 2025.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 27TH DAY OF MARCH, 2025.



F. GIKONYO M

JUDGE

In the presence of: -

1. Kiragu Kimani SC for HFCK
2. Mirie for Kingara for plaintiff
3. CA - Godfrey

