



**Ngatiri v I & M Bank Limited & another (Civil Case E788 of 2024)  
[2025] KEHC 6860 (KLR) (Civ) (27 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6860 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CIVIL  
CIVIL CASE E788 OF 2024  
AA VISRAM, J  
MAY 27, 2025**

**BETWEEN**

**GEORGE NGATIRI ..... PLAINTIFF**

**AND**

**I & M BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SUNSHINE CONSTRUCTION CO. LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. I have considered the Notice of Motion Application dated 30<sup>th</sup> December, 2024, together with the affidavit in support sworn on even date; the further affidavit sworn 27<sup>th</sup> January, 2025; the replying affidavit dated 13<sup>th</sup> January, 2025 sworn in opposition to the Application, the submissions of the parties, and the applicable law.
2. It is evident from a review of the documentation, namely, the letter of offer dated 11<sup>th</sup> August, 2023, 18<sup>th</sup> August, 2023, and legal charge dated 21<sup>st</sup> July, 2023, that the Applicant is not the registered owner of the property, and in fact, is a stranger to all the above documentation.
3. Having read the above charge, and letters of offer, it is also clear that the Applicant is not a Chargor of the property in question, and as such, I do not think he has any legal right, or other proprietary interest, to move the Court in respect of the present Application.
4. I say the above, noting that Section 24 of the [Land Registration Act](#) 2012, provides as follows:-  
24. Interest conferred by registration  
Subject to this Act—



- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
  - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
5. Moreover, Section 103 of the *Land Act* 2012, sets out the relief entitled to a Chargor of a property against the exercise by a Chargee of its remedy in relation to its statutory power of sale. Noting the above, the Applicant is not a person that is recognized for the purpose of Section 103 (1) and (2) of the *Land Act* 2012, which provides as follows:-

103 Application for relief by Chargor

- (1) An application for relief against the exercise by the Chargee of any of the remedies referred to in section 90(3) may be made by—
    - (a) the Chargor;
    - (b) if two or more persons are joint Chargors, by one or more of them on their own behalf;
    - (c) a spouse of the Chargor to the extent that the spouse was required to give consent to the creation of the charge but did not give consent; or
    - (d) deleted by *Act No. 28 of 2016*, s. 75;
    - (e) if the Chargor has been adjudged bankrupt, the bankruptcy trustee of the estate of the Chargor.
  - (2) If an application made in accordance subsection (1)(b) is not made by all the joint Chargors, then, unless the court orders otherwise, it must be served on all the joint Chargors.
6. Finally, in *Diamond Trust Bank Kenya Limited v Kaminara Agencies Limited & 2 others* [2025] KECA 48 (KLR) the Court of Appeal quoted with approval the decision in *Nairobi Mamba Village v National Bank of Kenya* [2002] 1 EA 197, in which Ringera, J. (as he then was), held that it was only a Chargor who may legitimately seek relief against the exercise by the Chargee of its power of sale. Ringera, J. observed the following:-

“In my judgment the only person who can legitimately complain that the power of sale is being exercised unlawfully, irregularly or oppressively is the charger...Let me also say that the Plaintiff has an interest in the charged property for it is both the security for its indebtedness and the location of its business.

However such an interest does not suffice to give it locus standi to obtain an injunction against the Chargee. The debtor’s interest it has in the property is not a proprietary interest therein and it does not in my view give it standing to question the exercise of the power of sale. The lessee or Licensee’s interest too does not suffice for the purpose of questioning the exercise of the power of sale.” (Emphasis mine)

7. Guided by the above, I am of the view that the Applicant has no locus standi to obtain an injunction in the present matter. In the absence of locus, it follows logically, that such a party cannot demonstrate



a prima facie case with a probability of success, and therefore, may not meet the threshold set out in *Giella v Cassman Brown* [1973] EA 358.

8. The above finding, in my view, brings this matter to an end. The remaining issues are accordingly moot, and it would not be appropriate for this Court to address the same.
9. The Application is dismissed with costs.
10. For the avoidance of doubt, any interim orders subsisting in relation to, or arising out of the present Application are hereby discharged.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 27TH DAY OF MAY, 2025**

**ALEEM VISRAM, FCI Arb**

**JUDGE**

In the presence of;

Court Assistant: Sakina

.....for Plaintiff/Applicant

.....for 1<sup>st</sup> Defendant/Respondent

.....for 2<sup>nd</sup> Defendant/Respondent

