



**Rono v Bank of Africa Limited & another (Commercial Case  
E005 of 2025) [2025] KEHC 9089 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9089 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
COMMERCIAL CASE E005 OF 2025  
RN NYAKUNDI, J  
JUNE 26, 2025**

**BETWEEN**

**PROFESSOR PHILIP K RONO ..... APPLICANT**

**AND**

**BANK OF AFRICA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**IGARE AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is pending before me for determination are the 2 Applications. The first one is a Notice of Motion Application dated 16<sup>th</sup> May 2025 in which the Applicant is seeking the following orders:
  - a. Spent
  - b. Spent
  - c. That this Honourable Court be pleased to grant an order of injunction restraining the Defendants whether by themselves, or their authorized agents, auctioneers and or any of them or otherwise from offering for sale, either by public auction or private treaty of that parcel of land namely LR. No Eldoret Municipality/Block 7/315 pending hearing and determination of the main suit.
  - d. Costs of this application be provided for.
2. The Application is based on the grounds on the face of it among others:
  - a. That the Plaintiff/Applicant is the registered proprietor of that parcel of land known as Eldoret Municipality/BLOCK 7/315.
  - b. That property is located within the Eldoret Central Business District and has a five-storey building with tenants occupying the units therein.



- c. That on 25<sup>th</sup> July 2024, the 1<sup>st</sup> Defendant offered the Applicant a loan facility of Kshs. 74,350,479.16/= and had the facility charged against the subject land parcel herein. The loan term was for a period of 180 months terminating around the year 2029.
- d. The facility was then restructured upwards in the year 2021 to a sum of Kshs. 89,011,303.21/= for a new term of 185 months terminating around June 2036.
- e. The terms of reference were captured in the restructured charge document duly executed on the 20<sup>th</sup> January 2021. Materially, the loan period has yet to lapse.
- f. On the 9<sup>th</sup> of October 2024, the parties herein held a meeting where they resolved that the bank would collect all the rent emanating from the premises. Another meeting was subsequently held on the 8<sup>th</sup> of April 2025. Minutes capturing these resolutions were reduced into writing.
- g. Since then, the bank has been collecting rent from the premises with an attempt to liquidate the loan amounts owed to the Applicant.
- h. On the 15<sup>th</sup> of May 2025, the Applicant was served with a letter from the 2<sup>nd</sup> Respondent dated 29<sup>th</sup> April 2025, a Notification of Sale from the 2<sup>nd</sup> Respondent, a valuation schedule that valued the property at Kshs. 112,500,000/= as well as a copy of a Newspaper Advertisement dated 29<sup>th</sup> April 2025.
- i. The Applicant was never served with the mandatory notice of intention to sell the property by the Respondents and the Applicant thought that the 8<sup>th</sup> April 2025 meeting and the resolutions therein were made in good faith. The Applicant didn't know of an actioned intention of the Respondent's disposal of the charged property and only came to know of the same on the 15<sup>th</sup> of May 2025.
- j. A perusal of the letter from the 2<sup>nd</sup> Respondent indicates that the sale seeks to recover a sum of kshs. 136,535,646.52/= from a principal sum of Kshs. 74,350,479.16/=.
- k. The owed account, if undistributed would mean that the Applicant would have paid a total sum that would be more than twice the principal sum advanced to the Applicant by the 1<sup>st</sup> Respondent.
- l. That the exorbitant interest rates charged are exorbitant and goes against the principle laid in the In Duplum Rule.
- m. That the Defendants/Respondents have neither issued to the Plaintiff/Applicant a valid valuation report, statutory notice nor have the auctioneers issued a valid notification of sale as required by the provisions of section 90 and 96 of the Land Act, 2012.
- n. That the Borrower is willing to clear the outstanding balance of the loan facility but one which is conscionable since the demand slapped on the Borrower is unconscionable in view of the In Duplum Rule.
- o. Since the property is developed with active tenants, the Applicant is amendable to ceding possession of the property to the 1<sup>st</sup> Respondent.
- p. The parties have also explored the option of disposing another piece of land namely Cheptiret/ Kapkoi Block 3 (Mugundoi) measuring 10 Acres whose proceeds the Applicant intends to clear the debt owed to him by the bank.



- q. On the 30<sup>th</sup> of April 2025, the Applicant got all the necessary licenses to reopen the African International College- AICO which institution is expected to be up and running as from the 15<sup>th</sup> August 2025. The college will be housed in the subject premises which in turn will boost the premises' turnover and thereby allow the Applicant defray the owed amounts.
  - r. That it will therefore be in the interest of justice that this Honourable Court grants temporary injunctive orders pending the hearing and determination of this application and thereafter the main suit.
3. The second application is a Notice of Motion Application dated 23<sup>rd</sup> June 2025 in which the Applicant is seeking the following orders:
- a. Spent
  - b. That pending the interpartes hearing of this application and thereafter the application dated 16/5/2025 this Honourable Court do issue a temporary order of injunction stopping the intended auction of 26/6/2025.
  - c. That pending inter partes hearing of this Application, and thereafter the Applicant's Application dated 16<sup>th</sup> May 2025, this Honourable Court do issue a temporary injunction restraining the Defendants/Respondents, their servants, agents, or auctioneers from offering for sale by public auction or private treaty the parcel of land known as LR NO. Eldoret Municipality/Block 7/315.
  - d. That the costs of this application be provided for.
4. The Application is based on the grounds on the face of it among others:
- a. The Respondents initially intended to auction the Applicant's property on the 20<sup>th</sup> of May 2025 but the same was arrested by an order arising out of the Applicant's application dated 16<sup>th</sup> May 2025.
  - b. On the 5<sup>th</sup> of June 2025 when the matter was set down for directions on the application, the court set the 30<sup>th</sup> of June 2025 for ruling on the application as well as the Respondents' Preliminary Objection. The same is still pending.
  - c. However, during the intervening period, the Respondents have moved to advertise the suit property and the same is now set for the 26<sup>th</sup> of June 2025.
  - d. The Applicant is apprehensive that should the Respondents proceed with the auction, the instant suit, the Application dated 16<sup>th</sup> May 2025 and the materiality of the Ruling slated for 30<sup>th</sup> June 2025 would be rendered mute.
  - e. The re-advertisement of the property for auction on 26<sup>th</sup> June 2025 lacks compliance with the law as espoused under the grounds anchoring the 16<sup>th</sup> of May 2025 Application.
  - f. The re-advertisement is also a scheme by the Respondents curated to circumvent this suit to defeat justice.
  - g. It would therefore be prudent that an order preserving the suit property be issued at least pending the hearing and determination of the earlier application dated 16<sup>th</sup> May 2025.
5. The Application is supported by the annexed affidavit dated 23<sup>rd</sup> June 2025 sworn by Professor Philip K. Rono, the Applicant herein in which he avers as follows;



- a. That the Respondents initially intended to auction my property on the 20 of May 2025 but the same was arrested by an order arising out of my application dated 16<sup>th</sup> May 2025.
  - b. That on the 5<sup>th</sup> of June 2025 when the matter was set down for directions on the application, the court set the 30<sup>th</sup> of June 2025 for ruling on the application as well as the Respondents' Preliminary Objection. The same is still pending.
  - c. That however, during the intervening period, the Respondents have moved to advertise the suit property and the same is now set for the 26<sup>th</sup> of June 2025.
  - d. That I am apprehensive that should the Respondents proceed with the auction, the instant suit, the Application dated 16<sup>th</sup> May 2025 and the materiality of the Ruling slated for 30<sup>th</sup> June 2025 would be rendered mute.
  - e. That the re-advertisement of the property for auction on 26<sup>th</sup> June 2025 lacks compliance with the law as espoused under the grounds anchoring the 16<sup>th</sup> of May 2025 Application.
  - f. That the re-advertisement is also a scheme by the Respondents curated to circumvent this suit to defeat justice.
  - g. That it would therefore be prudent that an order preserving the suit property be issued at least pending the hearing and determination of the earlier application dated 16<sup>th</sup> May 2025.
  - h. That the Honourable Court has the discretionary powers to grant the orders sought herein.
  - i. That what is deponed herein is true to the best of my knowledge save on matters deposed to upon information and believe the sources and grounds thereof have been duly disclosed and given.
6. The Application dated 16<sup>th</sup> May 2025 is opposed by the Replying Affidavit dated 23<sup>rd</sup> May 2025 sworn by Victor Keitany who avers as follows:
1. That I am employed as a Senior Recoveries Officer by Bank Of Africa Kenya Limited, the 1<sup>st</sup> Defendant/Respondent herein.
  2. That I am advised by the Bank's Advocates, which advice I believe to be sound, that this Honourable Court lacks jurisdiction to entertain the suit which arises out of a commercial dispute, not an environmental or land dispute. The suit is also *res judicata*, having been determined and dismissed in Eldoret HCCC No. 25 of 2021.
  3. That the Plaintiff has failed to disclose material facts, including the existence of prior proceedings over the same subject matter, and has misrepresented facts to this Honourable Court.
  4. That the Borrower, African International College Ltd, accepted a banking facility of KES 74,350,478.00 in July 2014. The Plaintiff, Prof. Philip Rono, and his spouse Calvin C. Mase executed the charge and personal guarantees as security.
  5. That the Borrower defaulted in repayment and despite repeated promises, including several loan restructures, moratoriums, and a last repayment in April 2019, they have not rectified the account. As at 22<sup>nd</sup> May 2025, the debt stood at KES 137,588,712.05. Statutory notices under Sections 90 and 96 of the *Land Act* were duly issued and served.



6. That following persistent default, the Bank instructed an auctioneer to advertise the charged property for public auction scheduled for 20<sup>th</sup> May 2025, preceded by a forced sale valuation on 7<sup>th</sup> April 2025, as required by law.
  7. That the Plaintiff executed all relevant documents as Chargor, Borrower, and Guarantor, and was fully aware of the obligations and statutory procedures. The present application is an afterthought, intended to delay and frustrate the Bank's legitimate recovery process.
  8. That the Plaintiff has not established any prima facie case, has come to court with unclean hands, and has failed to demonstrate irreparable harm or the balance of convenience.
  9. That the Applicant's motion dated 16<sup>th</sup> May 2025 is without merit, frivolous, and abusive of the court process, and I pray that it be dismissed with costs.
7. The Application was canvassed by way of written submissions.

### **1<sup>st</sup> Respondent's Written Submissions**

8. The 1<sup>st</sup> Respondent filed its submissions dated 23<sup>rd</sup> May 2025 in which the Learned Counsel submitted 2 issues for determination as follows:
  - a. Whether the present suit should be dismissed for being res judicata?
  - b. Whether the Applicant is entitled to the reliefs sought in his Application dated 16<sup>th</sup> May 2025.
9. On the first issue of whether the present Suit Should Be Dismissed for Being Res Judicata, the Learned Counsel argued that the suit is a duplication of Eldoret High Court Civil Case No. 25 of 2021 which was conclusively dismissed by Hon. Justice R. Nyakundi on 12th February 2024 for want of prosecution. The matter had previously involved the same parties, property, and prayers. Therefore, under Section 7 of the [Civil Procedure Act](#), the doctrine of res judicata applies: "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties... and has been heard and finally decided by such Court."
10. The 1<sup>st</sup> Respondent's Counsel relied on *Omar tla Sabrin Shop v Highrise Commodities Ltd* (Civil Appeal E291 of 2023) [2024] KEHC 6177 (KLR), where the court outlined five conjunctive elements of res judicata, all of which were satisfied in this matter. Further, the 1<sup>st</sup> Respondent's Counsel cited the case of *Satya Bhamu Gandhi v Director of Public Prosecutions & 3 others* [2018] eKLR, where the court (Mativo J) held: "The doctrine of abuse of process, based upon the inherent authority of every court to control its process and those persons who come before it, is a power incidental and necessary to the exercise of substantive jurisdiction... The abuse consists in the intention, purpose and aim of the person exercising the right, to harass, irritate, and annoy the adversary and interfere with the administration of justice..." Similarly, the Court of Appeal in *Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others*, Civil Appeal No. 36 of 1996, held: "Once an application for injunction within a suit has been heard and determined under the principles laid down in *Giella v. Cassman-Brown*, a similar application cannot be brought unless there are new facts... which merit a re-hearing and possible departure from the previous ruling." The 1<sup>st</sup> Respondent's submitted that the present application lacked new facts and was intended solely to delay justice.
11. On the second issue of whether the Applicant is entitled to the reliefs sought in the Application dated 16<sup>th</sup> May 2025, the Learned Counsel for the 1<sup>st</sup> Respondent argued that the Applicant had not met the threshold for granting interlocutory injunctions as established in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358, which requires: A prima facie case with a probability of success; Irreparable harm not



compensable by damages and Balance of convenience in the Applicant's favour. It was contended that: The Plaintiff had voluntarily charged the suit property as security for the loan; All statutory notices under Sections 90 and 96 of the Land Act were duly issued; A forced sale valuation dated 7<sup>th</sup> April 2025 was conducted, satisfying Section 97(2) of the Land Act; The total loan arrears (KES 137,588,712.05) remained within the in duplum rule as provided under Section 44A of the Banking Act.

12. In order to support this, the 1<sup>st</sup> Respondent's Counsel cited *Stek Cosmetics Ltd Vs Family Bank Ltd & Another* [2020] eKLR in which the Court stated that: "The loan amount continues to attract interest and the amount could easily outstrip the value of the properties... I find the balance of convenience to tilt in favour of the 1st Respondent..." *Patrick Kariuki v Kenya Commercial Bank Ltd & Another* [2021] eKLR in which the Court held that: "It is trite law that a dispute as to the outstanding loan amount cannot be a ground for granting an order of injunction." *Ronald Ratemo Moturi & Another v Credit Bank Ltd & Another* [2021] eKLR where the Court held "...the Defendant is a financial institution and is in a position to compensate the Plaintiff in the event any loss occurred."
13. The 1<sup>st</sup> Respondent's Counsel urged the court to dismiss the Applicant's motion for the following reasons: that the suit is res judicata, having been determined by a competent court; the Applicant has not satisfied the Giella test for injunctive relief; the application amounts to forum shopping and abuse of court process and that the Respondent's application dated 23<sup>rd</sup> May 2025 should be allowed in its entirety.

### **Analysis and Determination**

14. From the above, I take note that this decision revolves around the 2 applications which are before this Honourable Court for consideration being: The Notice of Motion dated 16<sup>th</sup> May 2025 seeking interim orders of injunction to restrain the Defendants from auctioning LR. NO. Eldoret Municipality/block 7/315 and The Notice of Motion dated 23<sup>rd</sup> June 2025, seeking orders to restrain the intended auction scheduled for 26<sup>th</sup> June 2025 pending the outcome of the 16<sup>th</sup> May 2025 application and ruling dated 30<sup>th</sup> June 2025. Upon review of the pleadings, affidavits, and rival submissions, the Court finds that the following issues arise for determination:
  - a. Whether the doctrine of res judicata applies to bar the present application.
  - b. Whether the Applicant has established a case for the grant of temporary injunctive relief.

### **Whether the doctrine of res judicata applies to bar the present application?**

15. The 1<sup>st</sup> Respondent's Counsel has relied on the doctrine of res judicata under Section 7 of the Civil Procedure Act, asserting that the current suit mirrors Eldoret HCCC No. 25 of 2021, which was dismissed for want of prosecution. The principle of res judicata is found in section 7 of the Civil Procedure Act Cap 21, Laws of Kenya which provides that:

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."



16. The Court of Appeal in *John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2015] eKLR quoted with approval the case of *Henderson v Henderson* [1843] 67 ER 313 as follows:

“.....where a given matter becomes the subject of litigation in and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time....”

17. In *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, Nairobi CA Civil Appeal No. 105 of 2017 ([2017] eKLR), the Court of Appeal held that: “Thus, for the bar of *res judicata* to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;
- a. The suit or issue was directly and substantially in issue in the former suit.
  - b. That former suit was between the same parties or parties under whom they or any of them claim.
  - c. Those parties were litigating under the same title.
  - d. The issue was heard and finally determined in the former suit.
  - e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
18. However, it is trite law that a dismissal for want of prosecution is not a determination on merits of the dispute. The essence of Section 7 is that the former matter must have been “heard and finally decided.” A suit struck out due to procedural default cannot bar a fresh claim where substantive rights are yet to be determined. The court further notes that the cause of action in the current case revolves around non-compliance with statutory procedures under the *Land Act*, specifically Section 90, 96, and 97, which were not litigated or determined in the former suit. Consequently, the defence of *res judicata* fails.

### **Whether the Applicant is entitled to a temporary injunction**

19. I take cognizant note that Order 40 Rule 1 and 2 of the Civil Procedure Rules, 2020 provides that the court has powers to grant an order of temporary injunction to restrain such acts and prevent the wasting, damaging, alienation, sale, removal or disposition of the suit land.
20. This is an application for temporary injunctive relief pending suit, and is governed by the principles in *Giella Vs Cassman Brown* and reiterated in the case of *Nguruman Limited Versus Jan Bonde Nielsen & 2 Others* Ca No. 77 of 2012 (2014) eKLR where the Court held thus:

“The conditions for the grant of an interlocutory injunction are now, I think, 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 damages; and if the court is in doubt then it can decide the application on a balance of convenience.

21. Therefore, according to the principles set out in *Giella Vs Cassman Brown*, an applicant is required to establish:
  - a. The existence of a prima facie case based on the Notice of Motion Application and Affidavit Evidence,
  - b. The likelihood of irreparable injury to the applicant if the injunction is not granted;
  - c. On where the balance of convenience tilts in case the court cannot decide based on the first two requirements.

### **On whether the applicant has established a prima facie case**

22. On what a prima facie case is the case of *Mrao v First American Bank of Kenya Limited & 2 Others* [2003] eKLR, the Court of Appeal defined the same when the court held;

“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...

But as I earlier endeavored to show, and I cited ample authority for it, 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 success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.” In light of the above, therefore, the onus of establishing a prima facie case commences from the evidence adduced before the courts and that indeed the case of the applicant’s case is one that is arguable with a probability of success.

23. In the case of *Naftali Ruthi Kinyua Vs Patrick Thuita Gachure & another* [2015] eKLR the Court of Appeal stated that: "With reference to the establishment of a prima facie case, Lord Diplock in the case of *American Cyanamid vs Ethicon Limited* [1975] AC 396 stated thus, "If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities that is the end of any claim to interlocutory relief."

24. The Applicant has demonstrated that the loan repayment period was contractually extended until June 2036 and that the parties had reached alternative repayment arrangements, including rental collection and proposed sale of other land to liquidate the debt. These negotiations create a legitimate expectation of deferred realization. The Applicant has also raised valid issues concerning statutory compliance with Sections 90 and 96 of the *Land Act* and alleged breach of the In Duplum Rule under Section 44A of the *Banking Act*. I take note of section 44 of the *Banking Act* which provides as follows:

44. Restrictions on increase in bank charges

No institution shall increase its rate of banking or other charges except with the prior approval of the Cabinet Secretary.

From the above discussion I am of the view that the issues by the Applicant raise arguable questions deserving judicial consideration.



On whether the Applicant stands to suffer an irreparable injury that cannot be adequately compensated by an award of damages:

25. In the case of *Nguruman Limited Vs Jan Bonde Nielson & 2 Others* [2014] eKLR, the Court of Appeal held that, “On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. 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 implication from the reading of the decision above is that the Applicant has to establish that he or she would suffer an irreparable injury that cannot be adequately compensated or remedied by any monetary award or damages that may be awarded later.
26. I am guided by the decision of *Family Bank Limited Vs Tassels Enterprises Limited & 2 Others* [2021] eKLR which cited the ruling of the Court of Appeal in *Nguruman Limited vs. Jane Bonde Nielsen & 2 Others* [2014] eKLR, stated that In cases where an award of damages could be adequate compensation, an injunction should not be granted. On an application for an injunction in aid of a plaintiff’s alleged right, the court will usually wish to consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve property without waiting for the right to be finally established This depends upon a variety of circumstances, and it is impossible to lay down any general rule on the subject by which the court ought in all cases to be regulated, but in no case will the court grant an interlocutory injunction as of course... The court ought to look at the allegations in the affidavits by the plaintiff and the defendant and weigh them whether there is a possibility of the plaintiff succeeding or whether there is a possibility of quantifying damages. Only in cases of doubt court will proceed based on the balance of convenience while being aware that formal evidence will be adduced at the hearing...
27. I take note that the suit property is a developed commercial asset within Eldoret CBD, occupied by tenants and hosting a licensed college. Its sale would result in loss of income, displacement of tenants, interruption of education programs, and potential damage to goodwill and long-term business operations. While the Bank can compensate financially, the nature of loss in this case - educational disruption and institutional goodwill - goes beyond mere monetary evaluation.

#### **On a balance of convenience**

28. In the case of *Chebii Kipkoech Vs Barnabas Tuitoek Bargoria & Another* [2019] eKLR, it was held that:

“The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience caused to them would be greater than that caused to the defendants if an injunction is granted and suit is ultimately dismissed.”
29. I take note that where an application is not clear cut on whether the application was made a prima facie case or will suffer irreparable loss, the court can determine the applications on the balance of



convenience. In Paul Gitonga Wanjau Vs Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR, where the court expressed itself thus:

Where any doubt exists as to the applicants' right, 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... 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.

30. If the injunction is denied and the auction proceeds, the suit property may be disposed of before the court determines the core dispute. On the other hand, if the sale is temporarily suspended, the Bank will continue collecting rental income and interest pending hearing. However, in this case, the Applicant has proposed alternate repayment, disclosed additional collateral, and expressed readiness to cede control of the property all demonstrating a good faith effort to resolve the dispute amicably.
31. From the foregoing, in my considered view, taking all the above into account, the Applicant has made out a case for the court to grant the interlocutory orders sought herein. The Respondents will not suffer inconvenience in case orders are granted. Consequently, upon considering the two applications, I grant the following orders:
  - a. That the Notice of Motion dated 16<sup>th</sup> May 2025 is hereby allowed.
  - b. That a temporary injunction be and is hereby issued restraining the Respondents, their agents, servants, and auctioneers from selling, alienating, or dealing with LR No. Eldoret Municipality/block 7/315, by public auction or private treaty pending hearing and determination of the main suit.
  - c. That the Respondents shall duly notify the Applicant of the expenses incurred in exercising their statutory power of sale which shall include but not limited to: Advertisement costs; Auctioneer's fees; Administrative costs or any other related expenses, which shall be promptly settled by the applicants on or before 10.7.2025. In default of compliance, the Applicant would have no audience before this court during the pre-trial conference scheduled on the 10.7.2025
  - d. That a declaration be and is hereby made that the Plaintiff's suit be set down for hearing within 21days from todays ruling and the condition precedent for the parties to comply with Order 11 of the Civil Procedure Rules is indispensable
  - e. Costs of the application shall be in the cause.
  - f. Pre-trial Conference on 10<sup>th</sup> July 2025.
  - g. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 26<sup>TH</sup> DAY OF JUNE, 2025**

.....  
**R. NYAKUNDI**

**JUDGE**

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