



REPUBLIC OF KENYA



**Armytex International Security Services Ltd & another v Equity Bank Ltd & another
(Civil Suit E088 of 2023) [2025] KEHC 12299 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E088 OF 2023
F WANGARI, J
JULY 31, 2025**

BETWEEN

ARMYTEX INTERNATIONAL SECURITY SERVICES LTD 1ST PLAINTIFF

LINET AWINO AWUOR MAENDE 2ND PLAINTIFF

AND

EQUITY BANK LTD 1ST DEFENDANT

MAKURI AUCTIONEERS 2ND DEFENDANT

RULING

1. The Plaintiffs/Applicants filed a Notice of Motion application dated 29/01/2025 under Certificate of Urgency pursuant to Order 22 Rule 22, Order 40, Order 51 Rule 1 and 15 of the Civil Procedure Rules, Section 1A, 1B, 3A, 59, and 63 of the [Civil Procedure Act](#), Article 40, 159 and 169 of [the Constitution](#), and all enabling provisions of the law.
2. The Applicants pray for orders;
 - a. That pending the hearing and determination of this suit, this court do issue an order of temporary injunction restraining the Defendants from proceeding with a public auction as against the Plaintiffs/Applicants to restrain them and their agents from attaching, auctioning and/or selling the Plaintiff's land known as L.R No. Mainland North/Section 1/19128 – Utange, L.R No. Mainland North/Section 1/21559 and L.R No. Mainland North/Section 1/22289.
 - b. That this court be pleased to make further orders it may deem fit in the circumstances to meet the ends of justice.
 - c. That costs of this application be in the cause.



3. The application is based on the Supporting Affidavit of Linet Awino Awuor Maende sworn on 29/01/2025 and on grounds in the application that guided by the determination made on 26th April 2024, the Plaintiffs/Applicants met the 1st Defendant's Head Office Debt Recoveries Unit SME Mr. Gerald Muendo and the Coast Region Credit Manager Mr. Gibson Kaloki and had a discussion of the outstanding loan arrears.
4. That it was agreed that the Plaintiffs do deposit Kshs. 1,000,000 towards the arrears. That it was also agreed that the 1st Defendant will restructure that loan as the financial standing of the Applicants would not allow them to pay the arrears at a go.
5. The Plaintiff/Applicants stated that the 1st Defendant gave its conditions for restructuring the loan which was amongst others to clear the outstanding arrears or make a lumpsum payment followed by a payment plan. That instead, the 2nd Defendant made another proclamation notice thereby hampering the effort made so far yet as at November 2024, the Plaintiffs had already liquidated a total sum of Kshs. 3,900,000 thereby clearing the substantial amount of the loan.
6. The 1st Defendant filed a Replying Affidavit sworn on 12/02/2025 by Benjamin Nzioka, the Credit Manager. It was stated that the Plaintiffs were seeking an injunction on the basis that the loan had not become due and that they had made a proposal for repayment which the 1st Defendant had not accepted.
7. That the Plaintiff had filed another Notice of Motion application dated 17/11/2023 seeking for an injunction and that the application herein raising the same issues is res judicata. That the statement by the court at paragraph 29 (b) of its ruling was not an order but an encouragement for parties to negotiate.
8. The 1st Defendant further stated that there was no meeting where the 1st Defendant undertook to restructure the loan. The Plaintiff was to clear the arrears before the loan could be restructured. That the payment of Kshs. 1,600,000 over a period of 9 months is a drop in the ocean considering the outstanding loan of Kshs. 25,862,102.82 as at 10th December 2024. The 1st Defendant therefore requested that the court dismisses the application herein for injunction.
9. The Plaintiffs/Applicants filed a Further Affidavit sworn on 17/06/2025 by Linet Awino where she reiterated contents of the Supporting Affidavit sworn on 29/01/2025 save to add that in the Notice of Motion application dated 17/11/2023, not all issues were dealt with and parties were given time to discuss them.
10. That before the issues could be deliberated upon, the Defendant issued another notice of sale by public auction, the basis of the application herein. That on 03/02/2025, the Plaintiffs/Applicants made a repayment of Kshs. 3,000,000 against arrears of Kshs. 10,800,000.
11. The Plaintiff/Applicants stated that they were positive about liquidating the arrears on the basis that on 15/05/2025, they received a tender for provision of security at the Kenya Ports Authority for a price of Kshs. 1,358,400 per month for a period of 3 years, that they further secured a lease at Plot No. 22289 SEC 1/Mainland North, BamburI for rental income for two shops of Kshs. 200,000 and Kshs. 150,000 respectively per month for a period of 5 years, and that a supermarket had also entered into an agreement with them to lease its premises for a period of 5 years commencing July 2025.
12. The Plaintiff/Applicants prayed that court intervenes to protect their interests as they were ready and willing to pay the loan arrears.
13. It was directed that the application be canvassed by way of written submissions.



Submissions

14. Parties filed their submissions to the application. The Plaintiffs/Applicants in their submissions dated 17/06/2025 argued on whether they have established a prima facie case with a probability of success that the term loans were extended until 2028 and that the only issue are arrears which they requested for time to liquidate if given a time frame.
15. That the Plaintiffs are willing to commence negotiations noting that it had a plan which will enable them liquidate the arrears. Reliance was placed on the case of *Giella v Cassman Brown and Company Ltd (1973) EA 385* where principles for granting injunctions were laid down, as well as the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (2003) eKLR*.
16. On whether the Plaintiffs/Applicants will suffer irreparable damage if injunction is not granted, they submitted that they are on the verge of losing their properties, that the properties which the 2nd Defendant intends to attach have more value than the loan advanced therefore it will suffer more, and that being a service industry, most of its employees to wit security guards will be rendered jobless.
17. On the balance of convenience, the Plaintiffs/Applicants stated that if the court is in doubt as to whether the applicant has established a prima facie case with a probability of success, and that damages would not be adequate compensation for the loss suffered, the balance of convenience should tilt in favour of preserving the status quo until the suit is heard and determined.
18. The Plaintiffs/Applicants submitted on whether the application herein is res judicata that the fact that the 2nd Defendant/Respondent took new notification of sale by public auction without allowing negotiations was a disadvantage to the Applicant. The Plaintiffs/Applicants therefore prayed that the application is allowed with costs to them.
19. The 1st Defendant/Respondent filed submissions dated 09/06/2025 and argued that the doctrine of res judicata bars the court from engaging in consideration of issues which have previously been dealt with by a court of competent jurisdiction. The 1st Defendant/Respondent made reference to the case of *Jampen Enterprises Limited v NIC Bank Kenya PLC & Another (2022) KEHC 12164 (KLR)*.
20. On applications for injunctions, the 1st Defendant/Respondent cited the case of *Campus Hostels Limited v Housing Finance Company Ltd & Another [2020] KEHC 6573 (KLR)*. That on the basis of the holding in *Kaburia v Cooperative Bank of Kenya Ltd [2024] KEHC 16895 (KLR)*, it would be wrong for the Plaintiffs/Applicants to argue that because they made payments after the ruling of 26/04/2024, a fresh cause of action accrued warranting the bringing of a fresh application.
21. That when the court accommodates a defaulting borrower, it does so only where it is demonstrated that the chargor is capable of settling the amount due within a reasonable time. The 1st Defendant/Respondent invited the court to find that the Notice of Motion dated 29th January 2025 is devoid of merit and should be dismissed with costs.

Analysis

22. Having considered the Notice of Motion application, supporting affidavit, Further Affidavit, the Replying Affidavit, and submissions by the parties, the issues for determination are: -
 - a. Whether the Plaintiffs/Applicants application is merited
 - b. What orders on costs should issue



23. This is the 2nd time the Applicants are seeking injunctive orders against the Respondents in respect to the intended auction being recovery process after the Applicants defaulted in repayment of loan advanced to them by the 1st Defendant. The Applicants had moved the court through the Notice of Motion Application dated 17/11/2023. The said application was dismissed by the Ruling of this court dated 26/04/2024. The parties were however encouraged to resolve the matter.
24. Since then, the Applicants have made some deposits towards the repayment of the loan arrears, but the fact remains that they are still in default of the said loan. This court associates itself with its previous Ruling dated 26/04/202 where it was held that the Applicants were duty bound to repay the loans as per the agreement and they were well aware of the said duty.
25. Nevertheless, the Applicants in their Further Affidavit dated 17/06/2025 have outlined the expected income arising out of income generating contracts as stated in the said affidavit. They state that they will be in a position to clear the arrears and be up to date with the loan repayment.
26. As submitted by the 1st Defendant, the court accommodates a defaulting borrower only where it demonstrates that it is capable of settling the amount due and within the reasonable time. On the other hand, the borrower cannot be allowed to continue defaulting at the expense of the lender. This court must strike a balance to accord justice to both parties.
27. In default of the averments in the Applicant's Further Affidavit, this application was doomed to fail. However, to accord the Applicants the benefit of doubt that they will be in a position to clear all the outstanding arrears, this court shall accommodate them. The arrears must be cleared within the next 90 days, in default, the Respondent to proceed with the recovery proceedings without further reference to this court.
28. On the issue of costs, it is settled that the same follows the event. That is the import of section 27 of the *Civil Procedure Act*. The court reserves its discretion on whether to award costs to either party. Considering the fact that this is an interlocutory application, each party should bear its own costs.

Determination

29. Based on the above discourse, I make the following orders: -
 - a. The application dated 29/01/2025 is allowed on the following terms;
 - i. That temporary injunction is granted but for a period of the next 90 days to allow the Applicants clear the outstanding loan repayment arrears and be up to date with the loan repayment plan.
 - ii. In default of (i) above, the 1st Respondent is at liberty to proceed with the recovery proceedings with no further reference to this court.
 - b. Each party to bear its own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF JULY, 2025.

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HON. F. WANGARI

JUDGE

In the presence of;



Mr. Ochieng Advocate for the Applicant

Ms. Cheruiyot Advocate h/b for Kongere Advocate for the 1st Defendant

Ms. Norah, Court Assistant

