



Mwangi t/a Quinam Investments Limited & another v Equity Bank Kenya Plc & another (Civil Case E017 of 2024) [2025] KEHC 11728 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL CASE E017 OF 2024
FN MUCHEMI, J
JULY 31, 2025**

BETWEEN

NANCY WAMBUI MWANGI T/A QUINAM INVESTMENTS LIMITED 1ST PLAINTIFF

ANTONY MUITA JOHNSON 2ND PLAINTIFF

AND

EQUITY BANK KENYA PLC 1ST DEFENDANT

GRACE MAINA T/A SUNLIGHT AUCTIONEERS LIMITED . 2ND DEFENDANT

RULING

Brief Facts

1. The application for determination dated 5th March 2025 seeks for orders of an injunction restraining the defendants, their servants and/or agents from selling by private treaty or public auction, leasing, entering into occupation, trespassing or interfering with all that parcels of land known as LR. No. MN/x/xxx located in Bamburi area Municipality, Mombasa County, LR. No. KJD/Kaputiei North/xxx, Loc5/Kabatia/xxx, xxx and xxx until the hearing and determination of the suit. In the alternative, the applicants seek for orders of review of the court's ruling dated 19th December 2024 to include property number LR. No. MN/x/xxx located in Bamburi area Municipality, Mombasa County, LR. No. KJD/Kaputiei North/11487, Loc5/Kabatia/xxx, xxx and xxx which formed part of the collateral of the facility advanced to them and proceed to grant an injunction on the same terms as in the said ruling.
2. The application is unopposed.



The Applicants' Case.

3. The 1st applicant states that they were issued with a notification of sale dated 18th November 2024 issued by the 2nd respondent informing them of its intention to sell property LR. No. MN/x/xxx located in Bamburi area Mombasa Municipality, Mombasa County by way of public auction after expiry of 45 days. The 1st applicant states that she was issued with a temporary injunction on 19th December 2024 staying the auction of property number LR. No. xxx located in Thika Greens Resort in Thika pursuant to a charge document between them and the 1st respondent that charged the aforesaid property together with property number LR. No. MN/x/xxx located in Bamburi area Mombasa Municipality, Mombasa County, LR. No. KJD/Kaputiei North/11487, Loc5/Kabatia/xxx, xxx and xxx.
4. The 1st applicant states that she was never issued with a 90 day statutory notice and 40 days statutory notice as required by law. Further, the property was valued only when the loan facility was being issued thus the 1st applicant is apprehensive that she will be greatly prejudiced in disposing off her properties without a valuation report that is 12 months old prior to the sale by auction to determine the current market value and forced sale value.
5. The 1st applicant argues that they will suffer irreparable loss not capable of compensation by way of an award of damages as the property in Mombasa constitutes their matrimonial home for the last 10 years.
6. Directions were issued that parties put in written submissions and the record shows that the applicants complied by filing submissions on 4th June 2025. The respondents on the other hand had not filed their submissions by the time of writing this ruling.

The Applicants'/Plaintiffs' Submissions.

7. The applicants rely on the cases of *Giella v Cassman Brown & Company Ltd* (1973) EA 358 and *Moses C. Mubia Njoroge & 2 Others v Jane W. Lesaloi & 5 Others* High Court ELC Case Number 514 of 2013 and submit that they have a prima facie case with high chances of success. The applicants argue that the respondents are unjustly trying to auction their property to realize the outstanding loan without issuing the requisite statutory notices to the applicants and their guarantors in line with the *Land Act*. Further, the 1st respondent has breached its duty of care to them in failing to ensure that a forced sale valuation has been undertaken before the property is advertised for sale by way of public auction.
8. The applicants submit that they stand to suffer irreparable loss as the property to be auctioned is their matrimonial home where they have lived together as husband and wife for over ten years. Further, the respondents failed to prove to the court service of any notices as required by law.
9. The applicants rely on the cases of *Jan N. Elsen v Herman Philipps Steya also known as Hermannus Philipps Steyn & 2 Others* [2012] eKLR and *Kenleb Cods v New Gatitu Services Station* [1990] KLR 557 and submit that the balance of convenience lies in their favour. The applicants further submit that they have in full disclosure admitted to the outstanding debt but they have proven that respondents failed to serve mandatory notices as per the *Land Act*. The applicants further state that they have taken steps working towards clearing the outstanding loan amount with the involvement of the 1st respondent where they are disposing off other properties to clear the loan arrears.



The Law

Whether the application has merit.

10. The applicants vide their application dated 16th July 2024 sought for orders of an injunction restraining the respondents from selling by private treaty or public auction their parcel of land known as premise 670 on LR. No. 28239 located at Thika Greens within Kiambu County until the hearing and determination of the suit. This court rendered its ruling on 19th December 2024 granting the injunction having found that the respondents did not serve the requisite notices particularly the 45 days redemption notice and notification of sale. The court further directed the applicants to deposit a sum of Kshs. 500,000/- in the 1st respondent's bank account to meet the costs incurred by the 1st respondent in the events leading to the institution of the instant suit and to continue servicing the loan as per the agreement of the parties. On 5/3/2025, the applicants' counsel informed the court that the applicants deposited Kshs. 3 million into the 1st respondent's bank account on 28/2/2025 which the 1st respondent confirmed and sought leave to file their statement of defence. The applicants then filed the present application and Amended their Plaintiff to include the aforementioned properties in Mombasa and Kajiado. I have perused the letter of offer dated 14th March 2022 and noted that the properties listed as security for the loan facility are LR No. MN/x/xxx, premises No. xxx on LR. No. xxxx (Original number xxxx) -Thika Greens and LR. No. Kjd/Kaputiei North/xxx.
11. I hereby do issue an injunction in respect of the properties LR No. MN/x/xxx and LR. No. Kjd/Kaputiei North/xxx pending the hearing and determination of this suit.
12. The costs of this application to abide in the suit.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

F. MUCHEMI

JUDGE

