



**Sasil Investment K Limited & 3 others v Co-operative Bank of Kenya Ltd & another
(Commercial Case E014 of 2025) [2025] KEHC 12248 (KLR) (18 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
COMMERCIAL CASE E014 OF 2025
M THANDE, J
AUGUST 18, 2025**

BETWEEN

**SASIL INVESTMENT K LIMITED 1ST PLAINTIFF
SILAS MWATELA MAZERA 2ND PLAINTIFF
MWARANDU KITSAO KOMBE 3RD PLAINTIFF
NANCY TATU KALENGA 4TH PLAINTIFF**

AND

**CO-OPERATIVE BANK OF KENYA LTD 1ST DEFENDANT
CALLEY AUCTIONEERS 2ND DEFENDANT**

RULING

1. By a plaint dated 30.7.25, the Plaintiffs seek a permanent injunction restraining the 1st and 2nd Defendants, by themselves, their employees, servants, agents or auctioneers from advertising for sale whether by public auction or by private treaty, disposing of, repossessing and/or interfering with the Plaintiffs' ownership to the parcels of land known as Title Numbers Chembe/ Kibambashe/867,868,877,879,885,886,896,897,880,881,882,883,865,866,898,899,900,901 and 902 and Title Number Mombasa/Shanzu Squatter/2232. The Plaintiffs also seek an order of mandatory injunction compelling the 1st Defendant, their agents, representatives and/or servants to produce a current valuation report of the aforementioned properties and all comprehensive and up-to date statements of accounts enumerating the current credit and debit entries of the 1st Plaintiff.
2. The Plaintiffs also filed an Application of even date seeking the following orders:
 1. Spent.



2. That this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendant by themselves, their employees, servants, agents or auctioneers from advertising for sale whether by public auction or by private treaty, disposing of, repossessing and/or interfering with the properties known as Title Numbers Chembe/Kibambashe/867, 868, 877, 879, 885, 886, 896, 897, 880, 881, 882, 883, 865, 866, 898, 899, 900, 901 and 902 and Title Number Mombasa/Shanzu Squatter/2232 pending the hearing and determination of this application.
 3. That this Honourable Court be pleased to issue an order of permanent injunction restraining the Defendant by themselves, their employees, servants, agents or auctioneers from advertising for sale whether by public auction or by private treaty, disposing of, repossessing and/or interfering with the properties known as Title Numbers Chembe/Kibambashe/867, 868, 877, 879, 885, 886, 896, 897, 880, 881, 882, 883, 865, 866, 898, 899, 900, 901 and 902 and Title Number Mombasa/Shanzu Squatter/2232 pending the hearing and determination of this suit.
 4. That this Honourable Court be pleased to issue a mandatory injunction compelling the 1st Defendant/Respondent, their agents, representatives and/or servants to produce a current valuation report of the aforementioned properties and all comprehensive and up-to date statements of accounts enumerating the current credit and debit entries of the 1st Plaintiff/Applicant.
 5. That costs of this application be provided.
3. The grounds upon which the Application is premised are set out in the Application and in the affidavit of Silas Mwatela Mazera the 2nd Plaintiff sworn on even date. He averred that he is a director of the 1st Plaintiff (Sasil) and that he and the 3rd Plaintiff are the registered owners of the properties known as Chembe/Kibambashe/867, 868, 877, 879, 885, 886, 896, 897, 880, 881, 882, 883, 865, 866, 898, 899, 900, 901 and 902 (the Chembe properties), while he and the 4th Plaintiff are registered owners of Title Number Mombasa/Shanzu Squatter/2232 (the Shanzu property); that the suit properties were charged to the 1st Defendant (the Bank) to secure a loan of Kshs. 80,000,000/= advanced to the 1st Plaintiff; that there has been default; that the Bank has loaded the loan facility with a myriad of penalties and highly unreasonable interest, thus making the loan facility unconscionable and is now claiming Kshs.169,241, 027.08; that on the Bank's instructions, the 2nd Defendant did on 5.5.25 advertise in the Standard Newspaper the suit properties for sale by public auction.
 4. The Plaintiffs claim that the Bank has failed and/or neglected to undertake a current, proper and independent valuation of the suit properties as required in law prior to purporting to exercise its statutory power of sale and further failed to render an accurate loan statement account and/or reconciled accounts in order to ascertain the true balance owed; that on 28.7.25, the 2nd Defendant served a fresh notification of sale of the suit properties on 19.8.25; that unless the orders sought herein are granted the Plaintiffs stand to suffer substantial loss and damage since they will lose their properties which will have been sold at below their market and forced sale marked values; that as a result of the intended sale, the Plaintiffs' right to property will be infringed.
 5. The Application is opposed by the Bank vide the replying affidavit of Duncan Matisero its Legal Manager, sworn on 7.8.25. He averred that the loan facility advanced to Sasil by the Bank was on the terms of the Letter of Offer dated 6.6.19. Further, that another loan was advanced to Sasil on terms of the letter of offer dated 3.1.2020 as amended vide an addendum dated 28.9.2020. It was averred that the loan advanced to Sasil was not for Kshs. 80,000,000.00 but that vide the addendum dated 28.9.2020, the Plaintiffs acknowledged that the then outstanding amount of USD 807,592.83 would



be rescheduled. Applying the exchange rate of Kshs. 129.00 to the USD, that amount would be the equivalent of Kshs. 104,179,475.07. Therefore, the demand for Kshs. 169,241,027.80 cannot offend the statutory cap in section 44A of the *Banking Act*.

6. It was further averred that following loan default, which the Plaintiffs acknowledge, the Bank served the Plaintiffs with 2 sets of 3 month statutory notice dated 8.11.21. The default was not rectified and the Bank served the Plaintiffs with 2 sets of 40 days' notice dated 13.3.22 to sell the suit properties; that the default persisted and a 45 day notification of sale was served on 15.11.24; that 2 sales scheduled for 30.1.25 and 20.6.25 were unsuccessful; that the sale scheduled for 19.8.25 will be the third attempt at realizing the security.
7. The Bank contends that the Application herein is an afterthought. The Bank denied that the Plaintiffs' claim that they have not been supplied with accurate statements and asserted that the statutory notices indicated the amount due. Further, that the Plaintiffs did not present any evidence that they had made a request for accounts which request was declined. It was averred that the amount due as at 7.8.25 was USD 1,317,951.37 and Kshs. 403,224.40, making a total of Kshs. 170,418,951.13. The Bank dismissed the Plaintiffs' allegations of unreasonable penalties and interest which are unsupported by evidence and that in any event, a dispute on the amount due or interest charged is not a ground for injunction since it does not extinguish the debt.
8. The Bank further denied that the Plaintiffs have made any application for restructuring of the loan, which in any event is not a right that can be protected by injunction.
9. On the claim that the suit properties are likely to be sold at an undervalue, the Bank stated that 2 valuation reports dated 15.7.25 and 16.7.25 by reputable valuers were presented; that the Plaintiffs have not shown how the said reports were deficient, nor have they presented a valuation of their own; that even if the properties are sold below their market value, compensation can be made to cover the difference.
10. I have given due consideration to the Application, the rival affidavits and the written submissions filed by the parties.
11. The undisputed facts are that the suit properties were offered by the Plaintiffs as security for the loan in question. There has been default on repayment of the loan and the Bank has caused the suit properties to be advertised for sale by public auction, by the 2nd Respondent.
12. The principles governing the grant of interlocutory injunction were set out in the case of *Giella v Cassman Brown* [1973] EA 358), where the Court of Appeal stated:

The conditions for a 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 must otherwise suffer irreparable injury, which would not adequately be compensated by an award for damages. Thirdly if the court is in doubt, it will decide an application on the balance of convenience.

13. A party seeking an interlocutory injunction must demonstrate a prima facie case with a probability of success. Such party must also show that he will suffer irreparably and that an award of damages will not be adequate compensation, if the orders sought are not granted. In the event that the court is in doubt, then a decision is will be made on a balance of convenience.



14. On whether the Plaintiff has demonstrated a prima facie case to justify the grant of the orders sought, the Court will be guided by the decision in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, in which the Court of Appeal had this to say on what constitutes a prima facie case:

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.

15. The Plaintiffs submitted that they have shown that they have a prima facie case with a probability of success. They assert that the loan was advanced in 2019 when the exchange rate was Kshs. 109/= and is now at Kshs. 128. Further that the Bank has grossly undervalued the suit properties. They contend that the Chembe properties were charged at Kshs. 27,500,000/= each, totalling to Kshs. 550,000,000/= and were undervalued at Kshs. 2,700,000/= totalling Kshs. 54,000,000/= in 2023. The Plaintiffs stated that in 2025, the said properties were valued at a market price of Kshs. 30,000,000/= and a forced value of Kshs. 22,500,000/= which is way below the initial valuation. As regards the Shanzu property, the Plaintiffs claim that as at 24.4.23, the same was valued at a market price of Kshs. 23,000,000/= and then at Kshs. 10,000,000/= as at 28.7.25. Further, that the fact of undervaluation of the suit properties is confirmed by the averment in the Bank's replying affidavit that the cumulative value of the suit properties is Kshs. 40,000,000/=. It was further contended that ordinarily land values appreciate. However, that the Bank intends to sell the suit properties at a throwaway price to attract buyers having failed in its last 2 attempts. The Plaintiffs submitted that the Bank's conduct has offended the provisions of Section 44A of the *Banking Act*.
16. The Plaintiffs further contend that they will suffer irreparable damage if the suit properties are sold and that their proprietary rights and interest are threatened and will be extinguished. Additionally, that the Shanzu property is the matrimonial home of the 2nd and 4th Plaintiffs and of great sentimental value. Their view is that the loss cannot be adequately compensated by damages.
17. The Plaintiffs also seek a mandatory injunction requiring the Bank to produce a current valuation report of the suit properties. They also seek an up to date statement of account up to August 2025 with current debit and credit entries, which comply with the interest and exchange rates.
18. For the Bank, it was submitted that it has not breached the provisions of Section 44A of the *Banking Act*. The Bank's position is that the Plaintiffs have not demonstrated any breach of the law as the admitted loan USD 807,592.83 the equivalent of Kshs. 104,179,575.07. As such, there is no violation of the law since the amount demanded is not double this amount. Further that even if the rate in 2019 of Kshs. 109 was applied, the amount would translate to Kshs. 88,027,618.47 and Section 44A of the Act would not be breached unless double the amount was demanded. On the ground that current statements have not been provided, the Bank argued that under Section 176 of the *Evidence Act*, the statements produced are prima facie evidence of their contents and the onus is on the Plaintiffs to rebut the same.
19. On the claim that the suit properties are undervalued, the Bank submitted that once a valuation is conducted if it later turns out that there was an undervaluation, there is adequate remedy in damages equivalent to the undervaluation.
20. The Plaintiffs' grounds for seeking injunctive orders against the Bank are that first, that the Bank has failed to undertake a current, proper and independent valuation. Second, that the Bank has failed to render an accurate or reconciled statement of account that ascertains the true balance due.



21. In Ezekiel Osugo Angwenyi & another v National Industrial Credit Bank Limited [2017] eKLR, relied on by the Plaintiffs, Ogola, J. considered a situation where the amount claimed by the lender was uncertain. The learned Judge stated:

124. In view of the different figures stated above, it was necessary for the Defendant to provide an account to the Plaintiff. This would at least have been done during the hearing. The Plaintiffs were entitled to know which entries had been made to their loan accounts, interests applied and applicable penalties. It is thus clear that with no accounts rendered, the sums owed by the Plaintiffs', if any, are not known and will never be known. Indeed, this is why the Defendant's witness carelessly testified that they were owed in excess of the Kshs. 20,000,000. It is therefore true that any amount alleged to be due to the Defendant by the Plaintiffs is a result of guesswork. A court of law cannot determine issues of account based on guesswork, and any bank which fails to keep proper records of account cannot make ascertainable claim against a customer. Banks must keep proper records of account. It is on the basis of such record that a claim for or against a bank can be determined. Since between a bank and a borrower the former is the one obligated to keep a more dependable record and to avail statements of account, a bank, like in this case, which cannot keep and avail accountable record will be disqualified from making any claims against a borrower, and would be hard put to discharge any such claims by a borrower.

22. In the cited case, the learned Judge found that no accounts had been rendered and that the amount claimed by the lender was guesswork, which the court could not consider. This is not the case herein. The amount demanded by the Bank is known and accounts had been rendered by the Bank. I accordingly find the authority unhelpful.

23. The Plaintiffs accused the Bank of loading the loan facility with a myriad of penalties and highly unreasonable interest thus making the loan facility unconscionable.

24. In spite of making this claim, the Plaintiffs have not exhibited any statements sent to them by the Bank showing the alleged myriad of penalties and highly unreasonable interest. Indeed, no evidence of correspondence between them and the Bank querying the said penalties and unreasonable interest was placed before the Court for its consideration. This claim is vague and unsupported by evidence. In this regard I associate with Majanja, J. who in Khan & another v Habib Bank AG Zurich & another (Civil Case 069 of 2021) [2022] KEHC 130 (KLR) (Commercial and Tax) (23 February 2022) (Ruling) stated:

In this case, the Plaintiffs have not shown that the entries or part thereof do not reflect that true state of their account. They have not shown which entry is erroneous or provided any evidence to contradict the statements. It is not enough to allege by a broad brush that the accounts are not clear or are hazy or that interest charged is unconscionable with full particulars that would enable the Bank respond and the court discern or adjudicate whether the Plaintiffs' allegations have merit.

25. In their submissions, the Plaintiffs contended that the accounts exhibited by the Bank were for the period up to 3.2.25 while they want statements up to August 2025. Notably, what they seek in their submissions is for a period after the date of the Application. Further, given the fact that there has been



no demonstration that the Bank has declined a request for statements, I find no justification for the grant of the mandatory injunction sought for supply of statements.

26. The Plaintiffs dispute the amount demanded by the Bank. Is this sufficient to stop the intended sale? There is a long line of authorities that a dispute in the exact amount due is not justification for restraining a lender from exercising its statutory power of sale. One such case is *Mrao Ltd*, (supra), where the Court of Appeal had this to say:

The circumstances in which a mortgagee may be restrained from exercising his statutory power of sale are set out in Halsbury's Laws of England, Vol 32 (4th edition) paragraph 725 as follows:-

"725 When mortgagee may be restrained from exercising power of sale. The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute, or because the mortgagor has begun a redemption action, or because the mortgagor objects to the manner in which the sale is being arranged.

27. On the ground of valuation, the Plaintiffs submitted that as at 15.11.24, the notification of sale had indicated that the open market value of the properties was Kshs. 54,000,000/= with a forced sale value of Kshs. 40,000,000/= but that the notification of 28.7.25 indicated that the open market value to be Kshs. 30,000,000/= and the forced sale value to be Kshs. 25,000,000/=. They thus contend that the Bank's conduct offends the provisions of Section 44A of the *Banking Act*. Further, that ordinarily, the value of land should appreciate. They thus contend that there is deliberate undervaluation to ensure a quick sale. The Bank denied violating the *Banking Act* and submitted that once a valuation is presented, the Plaintiffs' contrary view on the value is insufficient.

28. The *Land Act* provides for the power of sale of a charged property by a lender where there is default in repayment of a loan advanced, and such default is not rectified within the time provided. Section 96(1) of the Act provides:

Where a chargor is in default of the obligations under a charge and remains in default at the expiry of the time provided for the rectification of that default in the notice served on the chargor under section 90(1), a chargee may exercise the power to sell the charged land.

29. While a lender has the right to exercise its power of sale in cases of unrequited default, the law places a duty on such lender to obtain the best price reasonably obtainable at the time of sale. Section 97 of the Act provides as follows:

1. A chargee who exercises a power to sell the charged land, including the exercise of the power to sell in pursuance of an order of a court, owes a duty of care to the chargor, any guarantor of the whole or any part of the sums advanced to the chargor, any chargee under a subsequent charge or under a lien to obtain the best price reasonably obtainable at the time of sale.
2. A chargee shall, before exercising the right of sale, ensure that a forced sale valuation is undertaken by a valuer.

30. The record shows that the Bank complied with this requirement by carrying out valuation of the suit properties, the report of which indicates both the open market and forced sale values. While the Plaintiffs acknowledge this, they discredit the valuation and contend that the suit properties have been undervalued, given that in the notification served on 15.11.24, the open market value and the forced sale value was higher.



31. The allegation of charged properties being sold at an undervalue has been the subject of consideration in many court decisions. In *Zum Zum Investment Limited v Habib Bank Limited* [2014] eKLR, Kasango, J. stated:

In my view, the Plaintiff has not demonstrated satisfactorily why this court should disregard the Defendant's valuation report and only rely on the Plaintiff's valuation reports. It is not sufficient for the Plaintiff to merely claim that the intended selling price is not the best price obtainable at the time by producing a counter-valuation report. The Plaintiff must satisfactorily demonstrate why the valuation report that the Defendant intends to rely on in disposing of the suit property does not give the best price obtainable at the material time. The Plaintiff needs to show, for instance, that the Defendant's valuer is not qualified or competent to carry out the valuation, or that the valuation was carried out in consideration of irrelevant factors or that the valuation was done way before the time of the intended sale. The Plaintiff has not raised any of such grounds.

32. Similarly, in *Studertek Powers Systems (E.A) Ltd & another v Housing Finance Company Ltd* [2020] eKLR, Gikonyo, J. stated:

(22) The onus of proof is on the applicant to show on the balance of probabilities that the valuation did not obtain the best price envisaged under section 97 of the *Land Act*. It is not sufficient for him to merely rely on a valuation he obtained before the valuation by the respondent was done or by merely stating that the property could not depreciate on the basis of an earlier valuation. It is not strange or uncommon for real property to depreciate due to varied factors, say, change of character of the property, market dip or economic or financial depression caused by many factors including natural calamities such as COVI-19 Pandemic and so on and so forth. The applicant may be dissatisfied by the valuation done by the bank's valuer and may desire that it be sold at a particular and higher price. Such feelings arise when a chargor is about to lose property. But, that alone is not enough. The applicant failed to show that the valuation by the bank's valuer did not obtain the best price reasonably obtainable for the charged property in accordance with section 97 of the *Land Act*. They failed to discharge their burden of proof. I find that they have not offered sufficient evidence to show that valuation was underestimation of the charged Land. There is no reason to stop the sale scheduled for today.

33. I have carefully looked at the exhibited valuation reports and note that they indicate the basis of the valuation and how the values were arrived at. The Plaintiffs have not impugned the said basis nor qualification or competence of the valuer or that irrelevant factors were considered in the valuation. Further, the valuation was done just before the notification of sale was served upon the Plaintiffs. The Court appreciates that the Plaintiffs' desire is that the suit properties be sold at a particular or higher price than that in the valuation. My view however, is that the Bank having complied with its statutory obligation, the burden shifted to the Plaintiff to prove that the value arrived at by the Bank's valuer was not the best price reasonably obtainable at the time, even if the same was less than the previous year's valuation. The Plaintiffs however failed to discharge the burden of proof placed upon them.

34. On the claim that the Plaintiffs will suffer irreparable loss if the intended sale of the charged properties were to proceed, more so because the Shanzu property is the matrimonial home of the 2nd and 4th Plaintiffs, I can do no better than quote Ringera, J. (as he then was) who in *Isaac O. Litali vs Ambrose W. Subai & 2 Others* HCCC No. 2092 of 2000 stated:

[O]nce land has been given as security for a loan, it becomes a commodity for sale by that very fact, and any romanticism over it is unhelpful ... for nothing is more clear in a contract



of charge than that default in payment of the debt will result in the sale of the security. In that respect, land is no different from a chattel such as a motor vehicle or any other form of security. And needless to state, there is no commodity for sale whose loss cannot be adequately compensated by an appropriate quantum of damages.

35. The Plaintiffs charged the suit properties to the Bank, including the Shanzu property which they say is matrimonial property, on the full understanding that default in payment of the loan advanced, will result in the sale of the said properties. The Plaintiffs have readily admitted that there has been default. It follows that the Bank's right to exercise its statutory power of sale has crystalized.
36. After considering the matter herein, I find that the Plaintiffs have not demonstrated a clear and unmistakable right to be protected on account of being directly threatened by the intended sale of the suit properties. Further, they have not demonstrated an urgent necessity to prevent any irreparable damage that may result from the intended sale. See *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR. It follows that the Plaintiffs have not met the test for the grant of the injunctive orders sought.
37. In the end and in view of the foregoing, the Court finds that the Application dated 30.7.25 is unmerited and the same is hereby dismissed with costs to the Defendants.

DATED SIGNED AND DELIVERED IN MALINDI THIS 18TH DAY OF AUGUST 2025

M. THANDE

JUDGE

