



**Longitude Finance v Credit Bank PLC (Commercial Case E102 of 2023)  
[2023] KEHC 18657 (KLR) (Commercial and Tax) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18657 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E102 OF 2023**

**DAS MAJANJA, J**

**MAY 26, 2023**

**BETWEEN**

**LONGITUDE FINANCE ..... PLAINTIFF**

**AND**

**CREDIT BANK PLC ..... DEFENDANT**

**RULING**

1. In the Notice of Motion dated March 13, 2023, the Plaintiff has invoked Order 40 rule 1 of the [Civil Procedure Rules](#) seeking an injunction to restrain the Defendant (“the Bank”) from recovering the motor vehicle registration number KCF 454F (“the Motor Vehicle”) used as security for advances made to him. The application is supported by the affidavit of the Plaintiff, Michael Monari, trading in the of Longitude Finance, sworn on March 13, 2023. It is opposed by the Bank through the replying affidavit of its officer, Francis Ngaruiya, sworn on March 23, 2023. The parties’ advocates made brief oral submission in support of their respective positions.
2. It is not in dispute that the Plaintiff secured advances from the Bank using the Motor Vehicle registered in the names of both parties as one of the securities to support the facilities. These facilities are evidenced by the letter of offer dated January 22, 2018 where the Plaintiff requested and was advanced KShs 2,000,000.00. He was advanced another KShs 26,000,000.00 by the letter of offer dated 11<sup>th</sup> April 2018. By another letter of offer dated August 14, 2019, the Plaintiff was further granted another facility for KShs 80,000,000.00. The facilities were later restructured as evidenced by the letters of offer dated March 9, 2020 and March 31, 2021.
3. The Plaintiff’s case is outlined in the Plaint dated March 13, 2023 and the deposition in support of the application. The Plaintiff states that as at February 17, 2023, it owed the Bank KShs 28,035,311.15. He held a meeting on February 22, 2023 to discuss the correct amount of loan arrears where he confirmed that he had paid KShs 3,942,369.30 from January 2022 to February 2023 as a sign of goodwill as he



could not pay the sum of Kshs 750,000.00 per month demanded by the Bank. He asserted that he was making monthly payments which the Bank failed to acknowledge or give an account. He stated that he was able to pay Kshs 500,000.00 per month for 12 months before reverting to Kshs 750,000.00.

4. The Plaintiff avers that without informing him of the final position, the Bank proceeded to instruct auctioneers to attach the Motor Vehicle which is his main item of trade. He accused the Bank of failing to furnish him with accounts on his loan arrears despite several requests. He therefore prays for, “A permanent injunction restraining the Defendant from foreclosing properties belonging to the Plaintiff without following the due process and/or without appraising the Plaintiff on his account status”. The Plaintiff therefore urges that it has established a case for the grant of an injunction pending the hearing and determination of the suit.
5. The Bank opposes the application on the ground that the Plaintiff has not made out a case for the grant of an injunction. The thrust of the Bank’s case is that the Plaintiff does not dispute that it is indebted to the Bank. That the Bank has granted him indulgence and accommodation as evidenced by the several restructure facilities that have been negotiated by the parties, the last being the letter of offer dated March 31, 2021.
6. The Bank further points out that despite admission of indebtedness through emails and letters, the Plaintiff has continued to default in his obligation. As a result the Bank intimidated the Plaintiff through demand letters dated February 3, 2023 and February 17, 2023 that it should pay the outstanding balance of the Kshs 28,035,311.15 and if it defaults the Bank would proceed to exercise its rights. As the Plaintiff did not heed the demands, it engaged its auctioneers to proceed with recovery of the Motor Vehicle. They issued a proclamation which prompted the Plaintiff to make a further proposal dated February 22, 2023 which the Bank rejected by an email dated March 3, 2023.
7. The main issue for determination is whether the Plaintiff has made out a case for grant of an order of injunctive relief so that the Bank can be restrained from repossessing the Motor Vehicle. A plaintiff who seeks an interlocutory injunction must satisfy the requirements set out in *Giella v Cassman Brown* [1973] EA 348. It must demonstrate that it has a *prima facie* case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction is not granted, and if the court is in doubt show that the balance of convenience is in its favour. These requirements, as the Court of Appeal has stated in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* NRB CA Civil Appeal No 77 of 2012 [2014] eKLR, are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially. This means that if the Plaintiff does not establish a *prima facie* case then irreparable injury and balance of convenience do not require consideration.
8. As to what constitutes a *prima facie* case, the Bank rightly cited the decision of the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR which explained that 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 to call for an explanation or rebuttal from the latter.”
9. In order to establish a *prima facie* case with a probability of success, the Plaintiff must make out a case consistent with what it has pleaded in the Plaintiff. The pleading must of course sustain a cause of action in law. The Plaintiff does not dispute that he is indebted to the Bank as admitted in its various letters and emails. It does not dispute that fact that the Bank is entitled to repossess the Motor Vehicle in the event of default. Its complaint, as stated in the Plaintiff, is that the Bank should not do so, “without following the due process and/or without appraising the Plaintiff on his account status”.



10. While the Plaintiff does not deny indebtedness, it disputes the amount owed to the Bank and complains that the Bank is repossessing the Motor Vehicle without due process. It is now settled law that a charge, in this case the security holder, cannot be restrained from exercising its statutory power of sale merely on the basis of disputed accounts or interest (see *Mrao Limited v First American Bank of Kenya Limited and 2 Others* (Supra) and *Joseph Okoth Waudi v National Bank of Kenya* CA NRB Civil Appeal No 77 of 2004 [2006] eKLR).
11. In its replying affidavit the Bank has provided, the Plaintiff's statement of account which shows default. It has also furnished notices of default sent to the Plaintiff by registered post as evidenced by certificates of posting. The issue of lack of due process does not therefore arise. Consequently, the Plaintiff has not established a *prima facie* case demonstrating that its rights under the contractual documents have been violated. Neither the Plaintiff nor deposition refer to any breach of the respective letters of offer which can be restrained by an injunction.
12. It is clear that the Plaintiff's application lacks merit. The application dated March 13, 2023 is now dismissed with costs. The interim orders in force issued on March 14, 2023 are now discharged.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY 2023.**

**D. S. MAJANJA**

**JUDGE**

Instructed by Musyoki Mogaka and Company Advocates for the Plaintiff.

Mr Gakunga instructed by Kimani and Michuki Advocates for the Defendant.

