



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**HCCC NO. E110 OF 2019**

**HIGHGROVE HOLDING LIMITED.....PLAINTIFF**

**-VERSUS-**

**I & M BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENTS LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Through the Notice of Motion dated 24<sup>th</sup> November 2020, the applicants/defendants seek the following orders: -

- 1. The plaintiff's plaint dated 30<sup>th</sup> April 2019 be struck out.***
- 2. Costs of this application and the entire suit be borne by the plaintiff.***

2. The application is supported by the affidavit of the 1<sup>st</sup> defendant's Legal Manager **Mr. Andrew Muchina** and is premised on the grounds that: -

- a) The plaintiff duly executed the legal charge documents as particularized herein above for the entire debt and can only be lawfully discharged upon settlement of the entire debt-up to the limit of its liabilities with accrued interest and costs.***
- b) That bank is lawfully entitled to proceed with the realization of the charged properties to recover the outstanding debt.***
- c) A party that pollutes the river of equity does not deserve any injunctive relief.***
- d) The plaintiff has not established the test in *Giella v Cassman Brown*.***
- e) Once property has been offered as security it becomes a commodity for sale in the event of default.***
- f) Default having been admitted; the bank should be allowed to exercise its statutory power of sale.***
- g) A dispute to the amount owing is not a ground for grant of an injunction.***
- h) This honourable court cannot interfere with the bank's right to exercise its statutory power of sale in view of the plaintiff's blatant material non-disclosure and admission of default.***

3. The respondent did not oppose the application despite service with the pleadings and when the matter came up for hearing on 11<sup>th</sup> March 2021, **Mr. Gichuhi**, learned counsel for the applicants urged the court to allow the application. **Mr. Gichuhi** also informed the court that the plaintiff's suit is already spent following the selling of the charged property.

4. I have perused the various affidavits of service filed by the applicants herein especially the affidavit of service dated 21<sup>st</sup> January 2021 indicating that the respondent's advocates, MS ONE & Associates Advocates was served with the hearing notice dated 21<sup>st</sup> January 2021 for the hearing slated for 11<sup>th</sup> March 2021.

5. I am satisfied that the respondent was properly served with the hearing notice and in the absence of any opposition to the application dated 24th November 2020, I allow the said application as prayed.

**Dated, signed and delivered via Microsoft Teams at Nairobi this 18<sup>th</sup> day of March 2021 in view of the declaration of measures restricting court operations due to Covid -19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17<sup>th</sup> April 2020.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Ms Leah Muhia for the defendants.

No appearance for the plaintiff.

Court Assistant: Sylvia.