



REPUBLIC OF KENYA



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Aggarwal & another v Standard Chartered Bank (K) Limited & another (Civil Suit E009 of 2024) [2025] KEHC 2572 (KLR) (24 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT E009 OF 2024
E OMINDE, J
FEBRUARY 24, 2025**

BETWEEN

AMTT KUMAR AGGARWAL 1ST PLAINTIFF

OXY PLUS INTERNATIONAL COMPANY LIMITED 2ND PLAINTIFF

AND

STANDARD CHARTERED BANK (K) LIMITED 1ST DEFENDANT

LEGACY AUCTIONEERS SERVICES 2ND DEFENDANT

RULING

1. The Applicant approached this court vide a Notice of Motion application dated 19/08/2024 seeking the following orders;
 - i. Spent
 - ii. Spent
 - iii. That this Honourable Court be pleased to order the 1st defendant, to render a detailed account of the loan facility advanced to the Plaintiff, including but not limited to
 - a. The total loan amount approved and disbursed.
 - b. The complete and true copy of the loan agreement purportedly signed by the parties.
 - c. A comprehensive statement of account detailing all payments made by the Plaintiff, including dates, amounts, and applicable interest rates.
 - d. Any charges, fees, or penalties applied to the loan account and the basis for such charges.



- e. Any communications or notices sent to the Plaintiffs concerning the loan facility, including: but not limited to arrears notifications and demand notices.
 - iv. Spent
 - v. Pending the hearing and determination of the main suit, this Honourable Court be and is hereby pleased to grant an interim injunction restraining the Respondents whether by themselves or through their employees, servants or agents from advertising for sale, selling, alienating or in any way interfering with or disposing off the property known as Eldoret Municipality/Block 2/34 registered in the name of the Plaintiff/Applicant.
 - vi. Costs of the Application be provided for.
2. The Application is premised on the grounds set out therein and the contents of the affidavit in support of the application.

Applicants' supporting affidavit

3. The 1st Applicant in the said affidavit deposed that he is the proprietor of the parcel of the land parcel known as Eldoret Municipality/ Block 2/34. That the 2nd Applicant applied for a loan facility of Ks. 27,000,000 from the 1st Defendant which was approved upon such terms that the 1st defendant would deem fit and which included the provision of security. He annexed a copy of the Bank facility letter as AKA1
4. That the applicant agreed to repay the loan in 48 equal monthly instalments of Kshs. 731,060.72 which was revisable from time to time. He deposed that the 2nd applicant has made several payments towards the loan repayment but has been experiencing challenges on occasions when it was unable to make good monthly instalments, which it promptly communicated with the defendant.
5. He stated that the 2nd applicant issued him with a 14-day notice dated 04/07/2024 with the intention to sell or auction Eldoret Municipality/Block 2/34 by way of public auction and that the property is at risk of being sold at a throwaway price due to the hasty nature of the auction process. He annexed as AKA3 a copy of the letter sent by the defendant and a copy of the Notification of sale as AKA4. He urged that he had paid a substantive portion of the loan amount being more than $\frac{3}{4}$ and that he believes that what he owes is much less than what the respondent claims. Further, he deposed that he is not able to avail any document to demonstrate this because the 1st respondent has vehemently refused to supply him with documents despite his many attempts to visit the Eldoret office.
6. The deponent disputed the amount claimed by the respondents and urged that the interest rate charged for the facility were above the CBK rate of 14% as the respondents charged approximately 50% interest rate. He refuted ever being served with any notices as required by law or any statement in relation to the issuance of the Notification of sale on 04/07/2024. Further, he stated that the exercise of the statutory power of sale was irregular and unprocedural and as such, he has a prima facie case. He urged the court to allow the application.

Respondents' Replying Affidavit

7. The respondent opposed the application vide a replying affidavit dated 27/09/2024 sworn by Boniface Machuki, the Manager of the legal collections and recoveries department of the 1st defendant. He deposed that the 1st Plaintiff and his company, the 2nd Plaintiff, had been enjoying banking facilities since July 2018.



8. That on or about August 2020, the 1st Plaintiff and his company approached the 1st Defendant for a term loan. The 1st Defendant was agreeable to the Plaintiffs joint request and by the 1st Defendant's Facility Letter dated 21st August 2020 offered the 2nd Plaintiff a term loan of Kshs. 18,062,710/-. The terms of the Facility letter were duly accepted by the plaintiffs who each appended their respective signatures on the said Facility letter. The key terms of the Facility Letter were as follows;
- a) Interest would be the variable Benchmark Rate (currently 8.5%) (subject to a minimum of 8.5%) + a margin of 4% per annum (calculated on daily loan balances and payable monthly in arrears). He referred the Court to the last paragraph of clause 3 at page 4 of the Facility Letter annexed to their Replying Affidavit;
 - b) The loan would be repaid by 43 equal monthly instalments of Kshs. 523,287.55 with the instalment being revisable from time to time to an amount sufficient to cover the principal amount plus interest accruing at the prevailing interest rate until the facility is fully - refer to first paragraph, page 5 of the Facility Letter;
 - c) Security would be inter-alia the Charge created by the 1st Plaintiff in favour of the 1st Defendant over Title Number Eldoret Municipality Block 2/34 ("the Suit Property) - refer to fifth paragraph, page 8 of the Facility Letter.
9. In line with the agreement contained in the letter, the 1st Plaintiff continued to offer the charge dated 5th October 2018 over the suit property as security and which charge, by virtue of clauses 4 (a) and 14 thereof, constituted a continuing security for all of the liabilities of the 2nd Plaintiff. He deponed that the Plaintiffs jointly and severally bound themselves in the Facility Letter and the Charge to service the loan as per the terms of the agreement between the parties. He deposed that the Plaintiffs from early on, stopped meeting their end of the bargain and defaulted and to date continue to default, to the detriment of the 1st Defendant.
10. The deponent averred that the Plaintiffs have been in default of repayment of the loan for a long time, since February 2021, more than 3 years ago and only 3 months after disbursement of the loan on 25th November 2020, as neither of them ensured that the loan account was sufficiently funded, and also made payments that were grossly below the monthly instalments agreed upon between the parties, resulting in the accumulation of interest and penalties as reserved under the agreements between the parties. He referred to the Statements of Account which are annexed at pages 34 - 38 of the Defendants' Annexures which reveal the below key details about the Plaintiffs' default; -
- a. The Plaintiffs started defaulting on the loan as early as on or about 27th February 2021 when the February instalment was not paid on the due date as had previously been done for the December & January instalments;
 - b. Thereafter, all subsequent payments by the Plaintiffs fell grossly below the agreed monthly amount of Kshs. 523,287.55 except only 2 credits made on 30.04.2022 & 30.07.2022 i.e. only 2 credits in a period of more than 3 years met required instalment amount & on the agreed date;
 - c. There were absolutely no credits made in the period 07.09.2022 - 24.08.2023, being a period of almost 1 year, which is demonstration of the Plaintiffs' gross and blatant neglect of their contractual obligations under the Facility Letter and the Charge;
 - d. The aforesaid demonstrated default by the Plaintiffs has over the aforesaid period of more than 3 years led to the accumulation of interest and penalties, which has been the Plaintiffs' own doing by neglecting their obligations over such an extended period of time;



- e. Interest has always been charged at the rate agreed between the parties which was always the agreed margin of 4% above the Central Bank of Kenya Benchmark Rate, which keeps changing over time as fixed by the Central Bank of Kenya.
11. The deponent averred that at all material times the Plaintiffs were and have always been notified of the 2nd Plaintiffs indebtedness, and the loan balance was continually advised to them. Further, that Statements of Account were supplied over a long period as is evident by the various letters and emails exchanged between the Plaintiffs and the 1st Defendant, and from the many commitments to pay and proposal plans made by the Plaintiffs. Additionally, at no time during all these communications have the Plaintiffs ever denied owing the 1st Defendant the sums sought.
12. The deponent referred the court to the trail of emails exchanged between the Plaintiffs and the 1st Defendant and its Advocates (pages 56 -63 of Annexures) and the 2nd Plaintiff's letters dated 27.01.2023 (page 54 of Annexures) 19.03.2024, (page 55 of annexures hereto) which were duly signed by the 1st Plaintiff and his Co-Director and wife, wherein they acknowledge the debt due to the 1st Defendant and undertake to settle the same in monthly instalments of Kshs. 1 Million from February 2023 and Kshs. 700,000/- from March 2024 respectively, which promises were never met.
13. The deponent averred that the Plaintiffs have, by their own admission, acknowledged that the 1st Defendant notified them of the outstanding arrears on the loan and further, that the Plaintiffs have, in paragraph 8 of their Application and paragraph 6 of their supporting affidavit, admitted that they were unable to make payment of the loan, which is a clear admission of the debt. As a result of the Plaintiffs' aforesaid default, and having given the Plaintiff several chances to remedy the default to no avail, the 1st Defendant instructed its Advocates on record to commence the foreclosure process in respect of the Suit Property by issuance of the legally required statutory notices.
14. The deponent stated that the said statutory notices were duly issued by the said Advocates as follows;
- (a) Initial Demand Letter was issued on 19.01.2023 (annexed at pages 39-40 of the Defendants' Annexures) and duly sent the same via the Plaintiffs' email address [particulars withheld]@gmail.com' on 19.01.2023
- (b) 90 Days' Notice to Rectify Default/Statutory Notice was issued on 28.02.2023 –(annexed at pages 41 - 42 of the Defendants' Annexures) and duly sent the same via registered post to the 1st Plaintiff, the 2nd Plaintiff and the 1st Plaintiffs spouse through their postal addresses as set out in the Charge, per the Registered Post receipts (annexed at page 43 of the Defendants' Annexures) but most importantly also to their email address on 28.02.2023 as per the email (annexed at page 61 of the Defendants' Annexures);
- (c) 40 Days' Notice to Sell was issued on 19.07.2023 and 12.02.2024 (annexed at pages 44 - 45 and 47 - 48 respectively of the Defendants' Annexures) and duly sent the same via registered post to the 1st Plaintiff, 2nd Plaintiff and the 1st Plaintiffs spouse through their postal address as per the Registered Post receipts (annexed at pages 46 and 49 respectively of the Defendants' Annexures) but most importantly also to their email address on 19.07.2023 and 12.02.2024 respectively (as per the emails annexed at page 60 - 61 and 59 respectively of the Defendants' Annexures) and also physically served on the 1st Plaintiff (Chargor))per the Affidavit of Service and photos annexed at pages 50 - 53 of the Defendants' Annexures) noting that the 1st Plaintiff himself received the said Notice and endorsed his signature thereon.
- (d) Auctioneers 45 Days' Notice to Redeem and Notification of Sale dated 4th July 2024 were served by the 2nd Defendant on the Plaintiffs on 09.07.2024 - the said Notices have been duly



acknowledged as served and received by the Plaintiffs at paragraph 3 of their Application and paragraph 10 of their Supporting Affidavit and most importantly produced by the Plaintiffs themselves as Plaintiffs annexures.

15. The deponent stated that from the above demonstration, it is plainly evident that the Plaintiffs were both duly respectively served with all the statutory notices on registered post, on email and even physically at the Suit Property for the notices under 9(c) and (d) above, contrary to the 1st Plaintiff's blatant lies.
16. The deponent stated that the contents of the Plaintiffs' Application & Supporting Affidavit on non-service of the required notices are denied as the same are untrue and misleading to this court. The 1st Defendant has, as demonstrated that at all times it sent all required notices both to the email address used by the Plaintiffs, which email address they themselves used to communicate with the 1st Defendant, and additionally through registered post to the Plaintiffs' postal addresses as evidenced by the Defendants' respective annexures.
17. Prior to the intended auction on 13.09.2024, the 1st Defendant was in the process of procuring a current Valuation Report but which valuation was not finalized as the intended auction was injunctioned by this court on 23.08.2024 as the valuation is left for the days before the auction to avert piling additional costs on customers in the event they rectify the outstanding amount before the auction. The deponent stated that the Plaintiffs' allegations that the suit Property is at the risk of being sold hastily and at a throw away price are therefore unsubstantiated, presumptuous, wrongly speculative and highly misleading as such auction has not yet taken place. Nevertheless, the Defendants' compliance with the law is demonstrated by the fact that they had already procured the 1st advertisement of the intended auction in a Newspaper with the widest readership in the country, and had the injunction not been issued, would have continued to obtain the Valuation Report plus a 2nd Newspaper advertisement before the auction date.
18. The deponent averred that contrary to the Plaintiffs' blanket allegations, the intended auction sale has been demonstrated to be procedural, justified, transparent and in total compliance with the Law, and no iota of fraud has been pleaded, let alone proven against the said intended auction, nor against the Defendants, that would entitle this court to grant the Plaintiffs the orders sought in their subject application.
19. The deponent stated that as at 26th September 2024, the 2nd Plaintiff was indebted to the tune of Kshs. 9,388,127.36 being the total loan due, which sum continues to accrue interest and costs, and in respect of which defaulted loan, the 1st Plaintiffs property is liable to be sold in recovery thereof. The Plaintiffs have not proven their application and on the contrary, the balance of convenience tilts heavily in favour of the 1st Defendant and the Plaintiffs' Application should forthwith be dismissed with costs to the Defendants. He urged the court to dismiss the application with costs
20. The matter was canvassed by way of written submissions. Counsel for the plaintiff filed submissions dated 8th October 2024 whereas Counsel for the Respondent filed submissions date 31st day of October. I have perused the said submissions. I note that the greater part of the submissions is a repeat of the all the facts deposed in the Affidavits of the parties as already herein above summarised. I need not restate the same.
21. On the legal issues raised, Counsel for the plaintiff submits that the said plaintiff has met all the requirements for the granting of injunctions as set out in the case of *Giella v Cassman Brown* (1973) EA 358 and also in the case of *Nguruman Limited v Jan Bonde Nielsen and 2 Others* (2014) Eklr. Relying on the facts as deposed in the applicant's Affidavit, he submitted that the applicant has established a



prima facie case with a very high probability of success as defined in the case of Mrao Limited v First American Bank & 2 Others Court of Appeal Case No. 39 of 2002 whose findings were echoed in the Nguruman Case.

22. He submitted that this is more particularly so because in spite of the challenges that he was experiencing, the applicant has paid more than three quarters of the amount owed as can be surmised from the fact that the defendant now seeks arrears of Ks. 9,388,127.36 out of the total amount borrowed of Ks. 27,000,000/- He submits that in such a scenario, any attempt to recover the loan balance by way of sale/auction of the applicant's property is unjust, unfair and against the rules of justice and equity.
23. On irreparable injury, Counsel submitted that the property in consideration has intrinsic and sentimental value to the applicant. That he is emotionally attached to the property which he has had since 2018, a period of more than six years. That as such, the damage that would be caused to him if the property is disposed of cannot be made up by way of damages. That this is the reason why the applicant wishes to and will enter into an agreement with the 1st defendant on how to repay the amount in a bid to protect the property against its sale/auction
24. On the balance of convenience, Counsel relied on the case of Pius Kipchirchir Kogo v Frank Kemeli Tenai [2018] eKLR in urging the Court to find that if the injunction is not granted, the inconvenience the applicants will suffer will be much greater compared to a case where an injunction is awarded in their favour because if not granted, their property will be sold.
25. Counsel for the Respondent too relied on the case of Nguruman Limited above in their submission on the threshold required for the granting of an injunction. He also relied to a very large extent to the facts deposed in the Replying Affidavit and subsequently submitted, that contrary to the applicant's deposition, they were served with all the requisite and relevant Notices as is required under the relevant Statutory provisions. That through the numerous correspondences annexed, they have sufficiently demonstrated that they were in constant communication with the applicant and his lawyer and he was therefore very well informed of the status of his account at all times.
26. That further, the plaintiff has not rectified the outstanding arrears, has been and still is in default and for a long time too, and that they have never ensured that the loan account was sufficiently funded and/or made payments that were grossly below the agreed monthly instalments. That this is demonstrated by the fact that most of the debit entries in the statements of the applicant's loan account annexed is with respect to interest, charges, fees and penalties levied.
27. He submitted that it is preposterous for the applicant to make a blanket baseless allegation that interest on the loan was charged at 50%. That further, it should be noted that the applicant has not at all attached any proof of any payments made to date. That they merely allege to have rectified the arrears and/or paid three quarters of the loan in full yet the statements of accounts availed by the defendants show otherwise. That the Respondents having sufficiently demonstrated by way of relevant annexures that this was never the case.
28. Counsel therefore submits that this is a clear manifestation of their unclean hands. It is therefore his submission that in light of the fact that they have very ably disproved all the allegations made by the applicant, they have sufficiently demonstrated that the plaintiff has failed to establish a prima facie case to warrant the grant of an injunction.
29. On irreparable injury, Counsel cited the Case of Milimani Motors (K) Ltd v Kenya Commercial Bank Ltd [2014] eKLR in submitting that the injury occasioned to the Respondent if the injunction sought by the Applicant is granted will be irreparable. He submitted that this is because the said Respondent



did not and will continue to not receive the periodic payment and the loan will continue to balloon to the extent that it will exceed the value of the suit property which loss the Respondent will not be able to recover from the applicant. He submitted that the Respondent on the other hand is an international Banking Institution established in Kenya in the year 1911 and is well known as a 1st Tier Bank hence capable of compensating the applicant.

30. Counsel submitted that the balance of convenience tilts in favour of the Respondent for reasons that in a plethora of cases, Courts have consistently held that debtors cannot run away from their obligations by pleading sentimental value over charged property. That this is because by creating a charge over the property, the 1st applicant freely offered it as a commodity for sale in the event of default by his company the 2nd applicant and he cannot now be heard to argue that the suit property is of sentimental value to him. That in any event, the suit property is a commercial property that the 1st plaintiff has leased out to Lesere Feeds as the Respondents have demonstrated through their annexure viz the Affidavit of Service at page 50 of their annexures. The Respondent therefore prays that the Application be dismissed

Analysis & Determination

31. Having considered the facts of the case as well as the submissions as herein above summarised, it is my considered opinion that the following issues arise for determination;
1. Whether the threshold for an injunction has been met
 2. Whether the court should order for the Respondent to render a detailed account of the loan facility

Whether the threshold for an injunction has been met

32. The ingredients necessary for grant of a temporary injunction as set out in the leading case of *Giella v Cassman Brown* (1973) EA 358 as follows: -
1. An Applicant must demonstrate a prima facie case with a probability of success.
 2. An Applicant must demonstrate that he might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages if injunction is not granted.
 3. If the court is in doubt, it will decide an application on the balance of convenience.
33. The same principles were reiterated in the case of *American Cyanamid Co. v Ethicon Limited* (1975) A AER 504 as below;
- i. There must be a serious/fair issue to be tried,
 - ii. Damages are not an adequate remedy.
 - iii. The balance of convenience lies in favour of granting or refusing the application.

Prima Facie Case

34. The term “prima facie” case was defined in *Mrao Limited v First American Bank of Kenya* (2003) KLR 125 as follows;

“A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court a tribunal properly directing



itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

It was in the same case stated that: -

“A prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the Applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

35. Further, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen and 2 others* (2014) eKLR, also stated as follows on the issue of what a prima facie case should be construed to mean;

“the party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

36. The court went further to state that;

“we reiterate that in considering whether or not a prima facie case has been established, the court does not hold a minitrial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it the Applicant’s case is more likely than not to ultimately succeed.”

37. In considering whether the applicant herein has demonstrated that they have a prima facie case with a high probability of success, the first point of note which is key to the determination of this case is that by its very nature, it is a what I would call a documentary case in the sense that it stands or falls by proof through documents. Indeed, the relationship between the two parties was initiated by way a document common to both parties referred to as a Banking Facility Letter dated 21st August 2020 by which the suit property herein was charged and which both parties annexed to their various Affidavits and whose contents are not at all disputed. This document defined the kind of relationship the parties agreed to enter into, how the same was to be managed and what would happen in the event of default.

38. The applicant as has been summarised herein, has alleged several breaches of the agreement by the Respondent. However, save for the Banking Facility Letter, he did not annexe any document in support of his allegations stating that he sought for these documents from the Respondent but the same were never availed and he therefore had no documents to annexe. Not even copies of his own documents of proof of payment were annexed. He also alleges that he was never supplied with any Statutory Notices as already herein summarised.

39. On the other hand, the Respondents Replying Affidavit has annexures which the Respondents submits is proof that they were in constant communication with the Applicant and his lawyer, that they provided him with all the documentation he needed to keep him abreast of the state of his loan account and when it was apparent that the applicant was not willing to rectify the arrears, they issued the requisite notices as hereunder to the applicant;



- i. Notice of Default dated 19th January 2023 stating the number of days the applicant was in arrears, the amount in arrears, the outstanding amount and the interest rate (the court notes it is indicated at 13.25%). The same is indicated as sent by Registered Post, Copy of Ordinary Mail and email to [particulars withheld]@gmail.com
 - ii. A Notice pursuant to Section 90(1) and (2) of the Land Act 2012 dated 28th February 2023 was sent to the same addresses as above is annexed at page 41. The days in arrears is given as 179, the amount in arrears was Ks. 3, 148,966.98, outstanding amount Ks. 11,266,168.69 with the same interest rate. It gives the Respondent the requisite Three (3) Months Notice under as is required this provision of the law.
 - iii. The relevant Certificates of Postage are annexed at page 43.
 - iv. A Notice Pursuant to Section 96(2) of the Land Act No. 6 of 2012 dated 19th July 2023 sent to the same addresses as in i) above is annexed at page 44. The days in arrears is given at 327, the amount in arrears at Ks. 5, 785,998.47, outstanding amount at Ks. 11, 672, 754.22 and interest at 14%. It gives the Respondent the requisite Forty (40) Days Notice as is required under this provision of the Law
 - v. The relevant Certificates of Postage are annexed at page 49
 - vi. An Affidavit of Service by one Isaac O Oichoe dated 20th February 2024 was also annexed at page 50. The process server deposes that he physically affixed a 40 days' Notice issued on 12th February 2024 at the gate of the suit premises and also effected personal service upon the applicant at Rupa Mall in Eldoret on 15th February 2024 at 5.10pm. The signed notice is annexed at page 51.
 - vii. Letter with a proposed Payment Plan dated 27th January 2023 from the applicant to the Respondent through their Manager at Eldoret Branch
 - viii. Letter dated 19th march 2024 from the applicant to the Respondent's Advocate M/S K. Mwaura & Company Advocates acknowledging receipt of the 40 days' Notice date 12th February 2024 and making an offer to liquidate the outstanding debt by payments of Ks. 700,000/- pm
 - ix. Email correspondence between the parties containing various proposals on settlement of the debt by the applicant
40. As I have herein above pointed out, this is a case in which the documents produced speak for themselves. The documents annexed by the Respondent herein have spoken very clearly. Of note is that the applicant did not at all file a Further Affidavit controverting, rebutting and/or clarifying any of the depositions made in the Replying Affidavit together with the contents of the annexures thereto. These documents have demonstrated that there was in fact a very active communication channel as between the parties and their respective lawyers even as the applicant deposed that he was not able to avail any documents because the Respondent refused to provide them with any and therefore he was in the dark on what he had payed vis-à-vis what he owed.
41. The relevant Statutory Notices issued and the Certificates of Postage confirming service are part of the annexures. Indeed, the applicant by his letter dated 19th March 2024 confirmed receipt of the 40 days' Notice by the Respondents to himself. The Courts further notes that as way back as January 2023 the applicant was already giving a payment plan for to the Respondent meaning he was indeed aware of the arrears owed.



42. In light of the above, it is clear that has not been kept in the dark by the bank as alleged. They have in fact been communicating as has been very aptly demonstrated by all the correspondence between them as has been annexed by the Respondent. The annexure of the process server shows that he was personally served with the 40 days' Notice and from that Notice he knew very well that the interest rate charged was not 50% as he has alleged.
43. From the uncontroverted documents availed as evidence I am satisfied that he received all the various demand notices sent to him seeking that he rectifies the default as well as the requisite Statutory Notices issued under the provisions of the *Land Act* No. 6 of 2012. The applicant himself annexed the forty-five (45) days 'Redemption Notice issued to him by the 2nd Respondent to his Application. It follows therefore that the Respondents act of seeking to exercise their Statutory Power of Sale so as to realize the Security to the facility advanced to the applicant by way of sale by auction of the charged property in these circumstances can therefore not be said to be an illegality
44. In this regard, it is my very well considered opinion and therefore finding that the applicant has failed to demonstrate that he has a prima facie case with a high probability of success. This being the case then, as was held by the Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen and 2 others* (2014) eKLR, if the Court is satisfied that a prima facie has not been established then it need not delve into the other parameters of irreparable injury and balance of convenience, I will not delve into them.
45. I therefore find that the applicant's application lacks merit and the same is dismissed with costs to the Respondent. The interim orders herein earlier issued are now hereby vacated

READ DATED AND SIGNED AT ELDORET ON 24TH FEBRUARY 2024.

E.OMINDE

JUDGE

