



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baryan v Bank of India (Civil Case E299 of 2024) [2025] KEHC 3222 (KLR)  
(Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E299 OF 2024  
PM MULWA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**AMARJEET KAUR BARYAN ..... PLAINTIFF**

**AND**

**BANK OF INDIA ..... DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 30<sup>th</sup> May 2024. It seeks a temporary injunction restraining the Defendant whether by itself, employees, agents, or auctioneers from proceeding in any manner with the ongoing process of exercising statutory power of sale over the property known as 1870/111/194. It also seeks costs of the application to be borne by the defendant.
2. The Applicant avers he acted as a guarantor of Multiple Hauliers (EA) Ltd, the borrower, and charged the property LR. 1870/111/194 for a security of USD 3,200,000. She claims their right to redeem the property was obstructed when the Respondent refused, without valid justification, to allow the loan to be taken over by SBM Bank. There is an imminent risk of the property being sold through public auction.
3. In response the Assistant Legal Manager of the Respondent filed the Replying Affidavit sworn on 5<sup>th</sup> July 2024. He asserts that the Applicant is the spouse of the director of both Multiple Hauliers (EA) Ltd and Multiple Solutions Ltd, which both owe debts to the Respondent. He contends that Multiple Hauliers provided a corporate guarantee and indemnity to secure a loan for Multiple Solutions Ltd. Upon default by both companies, the Respondent consolidated their loan accounts per Clause 28 of the security instrument. This consolidation led to the refusal to approve the loan takeover. The Respondent argues that demanding full repayment of the debt does not deny the Applicant's equity of redemption. He asserts that the application does not meet the criteria for a temporary injunction, is legally unsound, and should be dismissed with costs.



4. Parties filed written submissions which I have considered alongside the pleadings and the affidavits filed in support of the parties' arguments. The primary issue for determination is whether the application is merited.
5. The principles governing the grant of interlocutory injunctions are well established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where the court held that an Applicant must demonstrate a prima facie case with a probability of success, show that they will suffer irreparable harm if the injunction is not granted, and establish that the balance of convenience tilts in their favor.
6. A prima facie case was defined in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR as:

“A case 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.”
7. However, in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal clarified that the three conditions are sequential in nature. The court observed:

“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration.”
8. The rationale is that a prima facie case forms the foundation upon which the subsequent conditions rest, without this foundation, the court cannot proceed to consider the other grounds, as the Applicant has not established any legal basis for the grant of the injunctive relief sought.
9. The core contention in this case revolves around the Respondent's refusal to approve a loan takeover by SBM Bank, which the Applicant asserts impedes their equity of redemption. The Applicant argues that this refusal lacks a valid justification and is a breach of the Respondent's duty to facilitate the redemption of the charged property. Conversely, the Respondent contends that its refusal is premised on the contractual rights conferred under Clause 24 of the facility letter, which permits the consolidation of loan accounts in the event of default.
10. The Respondent further maintains that Multiple Hauliers (E.A) Ltd and Multiple Solutions Limited, as separate entities, are jointly and severally liable for the outstanding debt due to the guarantee issued by Multiple Hauliers (EA) Ltd in favour of Multiple Solutions Limited. The Respondent also points to Clause 26 of the facility letter dated 20<sup>th</sup> September 2016, which explicitly allows the bank to consolidate loan accounts of the borrower and related entities. The Respondent asserts that these provisions were fully disclosed to and agreed upon by the borrower, including the Applicant in their capacity as guarantors.
11. The Applicant has not challenged the validity or enforceability of these clauses, nor have they provided evidence to demonstrate that the Respondent's reliance on these provisions is unreasonable or unlawful.
12. In *Diamond Trust Bank Kenya Limited v Prime Bank Limited & Another* [2020] eKLR, the court held that:

“Banks are entitled to enforce their contractual rights as stipulated in the loan and security agreements, provided such enforcement is consistent with the terms agreed upon by the parties and the applicable law. Equity cannot rewrite a contract for the parties.”



13. Similarly, in *Kenya Commercial Bank Limited v Suntra Investment Bank Ltd* [2015] eKLR, the court affirmed that the right to consolidate accounts is a valid and enforceable contractual right, provided that such right is expressly provided for in the loan agreement.
14. The equity of redemption is a fundamental principle in mortgage law, allowing a borrower to redeem their property upon payment of the debt owed. However, as held in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, equity cannot be used to defeat the clear provisions of a valid contract. The Applicant's allegations of impediment to their equity of redemption are therefore unfounded, as the Respondent's actions are consistent with the agreed terms of the loan and security instruments.
15. The Applicant has not provided sufficient evidence to demonstrate that the Respondent's actions in refusing the loan takeover were unreasonable or in breach of the contractual terms. In my considered view, the consolidation of loan accounts appears to be within the Respondent's contractual rights, and the Applicant has not shown how this action infringes upon their equity of redemption. Therefore, the Applicant has not established a prima facie case with a probability of success.
16. The Court of Appeal in *Nguruman Limited* (supra) further emphasized:

“The Applicant must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained. It is not sufficient to merely state that the act is unjust, oppressive or improper unless such assertions are supported by evidence.”
17. In light of the foregoing, the court finds that the Applicant has failed to demonstrate a prima facie case. I find no basis to delve into the remaining principles of irreparable harm or balance of convenience, as they are rendered moot by the failure to establish a prima facie case.
18. The upshot is that the Notice of Motion application dated 30<sup>th</sup> May 2024 is devoid of merit. The same is dismissed with costs.

**RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**P.M. MULWA**

**JUDGE**

In the presence of:

Mr. Ayieko Owino for Plaintiff

Mr. Tanui for Defendant

Court Assistant: Carlos

