



**Kanyingi v My Credit Limited (Commercial Case E728 of 2022)
[2025] KEHC 1824 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E728 OF 2022
PM MULWA, J
FEBRUARY 13, 2025**

BETWEEN

MARTIN NG'ANG'A KANYINGI PLAINTIFF

AND

MY CREDIT LIMITED DEFENDANT

RULING

1. On 6th November 2024, after reviewing the pleadings filed in the CTS, I determined that a plaint had been filed on 6th October 2022 consequently, I reinstated the Plaintiff's Notice of Motion dated 6th October 2022, which I had previously dismissed in my ruling of 17th October 2024 due to the absence of a substantive suit.
2. The application dated 6th October 2022 is the subject of this Ruling. It is brought under Order 40 of the *Civil Procedure Rules* and seeks an order of injunction restraining the Defendant whether by itself, its servants or agents or otherwise however from alienating, charging, transferring selling, disposing or dealing in any manner with the Title Number Njoro/Ngata Block 4/344 Rumwe pending the hearing and determination of the suit.
3. The application is based on the grounds outlined in the motion and supported by the accompanying affidavit. The plaintiff asserts that between December 2018 and June 2021, he sought various loan facilities from the Defendant, which were secured by the logbooks of three motor vehicles and the title deed to the property known as Njoro/Ngata Block 4/344 Rumwe (hereinafter the suit property). The Plaintiff claims that the Defendant charged excessively high interest rates and penalties, causing the loan amount to escalate. Additionally, the Plaintiff denies signing the offer letter dated 4th November 2021, which further restructured the loan. He contends that the Defendant, without notice, repossessed the motor vehicles securing the loan, sold them, and failed to provide an account of the proceeds. The



Plaintiff also accuses the Defendant of failing to register a charge on the suit property, instead having it registered in the Defendant's own name.

4. In opposition to the application, David Wangai, the Chief Operating Officer of the Defendant, filed a Replying Affidavit. He argues that the Plaintiff has not met the necessary threshold for the granting of an injunction. Wangai asserts that the Plaintiff took out several loan facilities from the Defendant, but subsequently defaulted on those loans. He further contends that the Plaintiff remains indebted and has failed to remedy the default despite numerous attempts by the Defendant to contact him and resolve the issue.
5. The application was heard by way of written submissions.

Analysis and Determination

6. I have considered the application, the grounds, affidavits and submissions. the issue for determination is whether the applicant has met the threshold for grant of the orders sought.
7. The Plaintiff seeks a temporary injunction to restrain the Defendant from selling or disposing of the suit property. This suit arises from the Plaintiff's default in meeting his financial obligations, which led the Defendant to seek repossession of the secured property and proceed with its sale.
8. The Plaintiff expresses concern that, unless interim orders are granted, the Defendant will proceed with the sale of the property, which has been registered in the Defendant's name. This action would defeat the purpose of the suit. The Plaintiff argues that the interim injunction is necessary to preserve the status quo until the suit is resolved.
9. The legal framework for granting an interlocutory injunction is outlined under Order 40(1)(a) and (b) of the *Civil Procedure Rules, 2010*:

“Where in any suit it is proved by affidavit or otherwise

 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree;
 - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”
10. The Plaintiff is obligated to demonstrate that the suit property is in danger of being alienated. In this case, the Plaintiff acknowledges seeking financial assistance from the Defendant, securing the loan with the logbooks of three vehicles and the title to the suit property. The Plaintiff claims the Defendant repossessed and sold the vehicles without notice or accountability for the proceeds, and is apprehensive that the Defendant will proceed to sell the suit property if an injunction is not granted.



11. In *Giella v Cassman Brown & Company Limited* [1973] EA 358, the court sets out the conditions to satisfy in granting injunctions, thus:

“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 might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

12. A prima facie case is indeed the cornerstone for granting an injunction. The law is clear that if a prima facie case is not established, the court should not proceed to consider the other two limbs (irreparable injury and balance of convenience).
13. The first issue that must be considered, therefore, is whether the Plaintiff has established a prima facie case with a reasonable likelihood of success. A prima facie case does not require the applicant to prove that they will ultimately win the case; rather, it means that the applicant must present a legitimate and serious issue for the court’s investigation.
14. The fact that the Defendant allegedly registered the suit property in its own name raises significant doubt about the propriety of its actions. The Defendant has not adequately addressed the issue as to why a charge was not created over the suit property. Instead, the Defendant claims that the Plaintiff was aware of the transfer of the property into its name. Is the Defendant attempting to secure a permanent interest in the suit property in a manner that is unjust, and potentially in violation of the Plaintiff’s rights? The issue of the alleged improper registration is crucial and warrants further investigation. My view is that the Plaintiff has established a prima facie case.
15. While it could be argued that any harm suffered by the Plaintiff could be compensated by way of damages, it is evident that the nature of the harm in this case goes beyond what can be adequately compensated through monetary damages. If the Defendant proceeds to sell or alienate the suit property, this would not only diminish the Plaintiff’s property rights but also potentially render any eventual judgment in the Plaintiff’s favor ineffectual. The loss of the suit property would be irreversible and damages, no matter how substantial, would not be adequate to fully restore the Plaintiff to the initial standing.
16. In *Waitbaka v Industrial and Commercial Development Corporation* [2001] eKLR, Ringera, J. anxiously considered the point and delivered himself in the following words:
- “As regards damages, I must say that in my understanding of the law, it is not an inexorable rule that where damages may be an appropriate remedy, an interlocutory injunction should never issue. If that were the rule, the law would unduly lean in favour of those rich enough to pay damages for all manner of trespasses. That would not only be unjust but it would also be seen to be unjust...”
17. To deny a citizen guaranteed legal constitutional right is an extreme and harsh step that must be frowned upon. Frowned upon for it portends a situation where so long as one is endowed with financial muscle, he would offend and trod upon others rights and always demonstrate ability to pay (*Margaret Wanjiru T/A Peggy Phones v Peter Kamau T/A Kawandara General Stores & 2 Others* [2015] eKLR).
18. In light of the seriousness of the Plaintiff’s claims, the potential for irreparable harm, and the fact that the balance of convenience favors preserving the *status quo*, I find that the Plaintiff has sufficiently demonstrated the need for an injunction to prevent the Defendant from proceeding with actions that



could prejudice his rights. Thus, I conclude that the Plaintiff has satisfied the requirements for the granting of the injunction and I am persuaded that it is in the interests of justice to issue the relief sought, that of injunction to preserve the status quo pending the full determination of the case.

19. Consequently, I allow the Notice of Motion dated 6th October 2022. Costs shall be in the cause.

RULING DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

P.M MULWA

JUDGE

In the presence of:

Ms. Gachinga h/b for Mr. Namachanja for Plaintiff/Applicant

Mr. Kofuna for Defendant/Respondent

Court Assistant: Carlos

