



**Patel v Bank of Baroda Kenya Limited & 2 others (Commercial Case E528 of 2024)  
[2025] KEHC 2144 (KLR) (Commercial and Tax) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2144 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E528 OF 2024  
JWW MONG'ARE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**REVABEN RAJNIKANT PATEL ..... PLAINTIFF**

**AND**

**BANK OF BARODA KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**RAJNIKANT PATEL ..... 2<sup>ND</sup> DEFENDANT**

**AQUVA AGENCIES LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff has filed a Notice of Motion dated 6<sup>th</sup> September 2024 seeking to restrain the 1<sup>st</sup> Defendant (“the Bank”) from exercising its statutory power of sale over the properties known as LR No. Nairobi/Block 91/64 and 91/65 (“the suit properties”) pending hearing and determination of the suit. The suit properties are owned by the Plaintiff and the 2<sup>nd</sup> Defendant and were used to secure a loan facility advanced by the Bank to the 3<sup>rd</sup> Defendant. The application is supported by the Plaintiff’s affidavits sworn on 6<sup>th</sup> September 2024 and 11<sup>th</sup> November 2024 and it is opposed by the Bank through the replying affidavit of its Legal Officer, Alfred Arunga, sworn on 1<sup>st</sup> October 2024. The application has been canvassed by way of written submissions which together with the pleadings, I will make relevant references to in my analysis and determination below.

**Analysis and Determination**

2. Having carefully considered the pleadings and the rival submissions filed herein. I note that from the parties’ pleadings and submissions, the main issue for determination by the court is whether an injunction should issue so that the Bank is restrained from exercising its statutory right of sale over the suit properties. The parties agree that for the Plaintiff to succeed in her application, she has to establish



that she has a prima facie case with a probability of success, that she will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if it does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR))

3. The Plaintiff's first hurdle is establishing a prima facie case and to do so, she must present material before the court so as to demonstrate that there exists a right which has apparently been infringed by the Bank so as to call for an explanation or rebuttal from the latter (see *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR)). A prima facie case is premised on what has been pleaded in the plaint. First, the Plaintiff avers that the Bank has not served upon the Chargors copies of the statutory notices provided for in sections 90(1) and 96(2) of the *Land Act* (Chapter 280 of the Laws of Kenya) and the 45-day redemption notice under Rule 15 of the Auctioneers Rules. To this, the Bank has responded that once the 3<sup>rd</sup> Defendant's account fell into arrears, it issued the Notices and served the same upon the Plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants through the postal address; P. O. Box Number 44067-0100 Nairobi which the Bank states is shared by the three of them and was provided for in the Letter of Offer, Guarantee and Indemnity and the instrument of Charge. In support of its assertion that the Plaintiff was served with the Statutory Notices and the Redemption Notice, the Bank has annexed the certificates of postage. The Plaintiff has not disputed this position and I find that the Bank has demonstrated, at least on a prima facie basis, that the Statutory Notices and the Redemption Notice were served upon the Plaintiff through her correct postal address (see *Nyangilo Ochieng & another v Fanuel B. Ochieng & 2 others* [1996] KECA 205 (KLR))
4. Second, the Plaintiff has stated that the Bank has not conducted a forced sale valuation to determine the value of the suit properties as required by section 97 of the *Land Act* and that the Bank is threatening to dispose of the suit properties for sums below the market values. The Bank responded by deponing that it conducted a valuation of the suit properties and it annexed a valuation report dated 13<sup>th</sup> March 2024 where the forced sale values are indicated therein. It is therefore not correct for the Plaintiff to state that the Bank has not conducted a forced sale valuation of the suit properties. On the value of the same, it should also not be lost that a valuation report is based on the professional and expert opinion of a duly qualified valuer who assessed the value of properties based on accepted parameters. In order to displace a professional valuation, the Plaintiff must produce clear evidence that the valuation is wrong or at least doubtful. Mere assertions or statements are not sufficient (see *Palmy Company Limited v Consolidated Bank of Kenya Limited* [2014] KEHC 4811 (KLR)).
5. Even if I am to assume that the suit properties have been undervalued as per the said valuation report, the same does not outrightly entitle the Plaintiff to an injunction. This is because any loss suffered by the Plaintiff as a result of the undervalue represented by the difference in valuation is a finite value which represents damages that the Plaintiff has not shown that the Bank is incapable of paying. I therefore reject the Plaintiff's entreaty that seeks an injunction based on his dispute of the valuation figures of the suit properties.
6. Third, the Plaintiff has stated that she has not been aware of the status of the 3<sup>rd</sup> Defendant's loan obligations. However, since the statutory notices were served upon her, she cannot feign ignorance as to the loan status and amounts owed by the 3<sup>rd</sup> Defendant. In any event, the Bank has annexed the 3<sup>rd</sup> Defendant's statement of account which the Plaintiff has not disputed and the same gives a detailed account of the 3<sup>rd</sup> Defendant's indebtedness.



7. In sum, the Plaintiff has failed to demonstrate a prima facie case with a probability of success and its quest for an injunction is halted at this point and in line with the dicta in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* (supra)

**Conclusion and Disposition**

8. The Plaintiff's application dated 6<sup>th</sup> September 2024 is dismissed forthwith with costs to the Defendant. The interim orders in place are hereby vacated. It is so ordered.

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

.....

**J.W.W. MONGARE**

**JUDGE**

In the Presence of:-

N/A for the Plaintiffs/Applicants.

Mr. Kitonyi for the Defendants/Respondents.

Amos - Court Assistant

