



Sanyi Jituan Sensen Investment Limited & another v Equity Bank Kenya Limited (Civil Case E145 of 2024) [2025] KEHC 843 (KLR) (Commercial and Tax) (3 February 2025) (Ruling)

Neutral citation: [2025] KEHC 843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E145 OF 2024
A MABEYA, J
FEBRUARY 3, 2025**

BETWEEN

SANYI JITUAN SENSEN INVESTMENT LIMITED 1ST PLAINTIFF

**JINGXI JUNJIE REAL ESTATE DEVELOPMENT COMPANY
LIMITED 2ND PLAINTIFF**

AND

EQUITY BANK KENYA LIMITED DEFENDANT

RULING

1. The plaintiffs filed a Notice of Motion dated 13/3/2024 under Order 40 Rule 2 of the [Civil Procedure Rules](#) seeking a temporary injunction to restrain the defendant from charging further interest and penalties on the 1st plaintiff's Loan Account Numbers [particulars withheld] and [particulars withheld], respectively or referring the applicants' names to any Credit Reference Bureau (CRB) pending the hearing and determination of this suit.
2. The application was based on the grounds set out on the face of the Motion and the supporting and further affidavits sworn by the 1st plaintiff's Managing Director, Ye Yongqing on 13/3/2024. The Plaintiffs also filed written submissions dated 24/6/2024.
3. The defendant opposed the application through grounds of opposition dated 19/4/2024, a replying affidavit sworn by its Manager, Legal Services, Kariuki King'ori on 9/5/2024 and written submissions dated 10/10/2024.
4. The background to the application is that the 1st plaintiff is the registered owner of the properties known as LR No. 28223/33/C3; LR No. 28223/33/C4; LR No. 28223/33/C5; LR No. 28223/33/C6; LR No. 28223/33/C7 and LR 28223/33/C8 ("the six C properties") located along Kiambu Road,



- being portions excised from LR No. 28223/33/C and LR No. 28223/33 (Original No. 28223/2) 1 while the 2nd plaintiff is the registered owner of the property known as LR. No. 4858/4 located in Kileleshwa, Nairobi County.
5. Both acquired the properties from the defendant Bank, through agreements for sale dated 24/12/2019 by way of private treaty, with consent of the previous owners, New Attitude Limited and Muga Developers Limited.
 6. The plaintiffs also, through a Loan Agreement dated 24/12/2019, took a Plot Purchase Loan Facility of USD. 9,139,000/- together with a Revolving Working Capital Limit of USD. 4,000,000/- from the defendant to finance the purchase. As security, a first legal charge of USD. 9,139,000/- over the six C properties and a legal charge of USD 4,000,000/- over LR No. 4858/4 (the charged properties) were registered in favour of the defendant. In addition, the 2nd plaintiff issued a corporate guarantee.
 7. On 29/8/2023, the 1st plaintiff was sued in ELC Case No. E075 of 2023 - *Nancy Wanja Gatabaki & 2 Others v Sanyu Jituan Sensen Investment Ltd & 2 Others* over the ownership of the six C properties excised from LR No. 5980/1 which form part of the charged properties.
 8. On 16/10/2023, the 1st plaintiff was served with an Enforcement Notice by the Nairobi City County Government, demanding the removal of "illegal" structures on the Property known as LR No. 5980/1 and vacation by the occupier. In turn, the defendant bank filed ELC PET/E014/2024 (*Equity Bank (K) Limited v Nairobi City County*) on 14/3/2024 to recover Plots C6, C7 and C8.
 9. From this backdrop, the 1st plaintiff claims that it could not continue servicing the facilities and that when the facilities fell into arrears, the defendant purported to auction the charged properties in order to recover the outstanding balance. Consequently, the plaintiffs filed ELC Case No. E024 of 2024 - *Sanyu Jituan Sensen Investment Ltd & Ano v Equity Bank Kenya Limited & Another* and the Court issued temporary injunctive orders against the defendant and Philips International Auctioneers, restraining them from auctioning or in any other manner dealing with the charged properties, pending the hearing and determination of that suit.
 10. The plaintiffs claim that since the facilities are still accruing interest and penalties for non-payment, they stand to suffer great prejudice and irreparable loss should they be condemned to pay the outstanding balance of the Facilities together with accruing interest and penalties in the pendency of the ongoing cases and further in the pendency of the present proceedings.
 11. On its part, the defendant argues that long before the claim ownership over the C properties was filed on 29/8/2023, the 1st plaintiff had defaulted on the loan repayment obligations, causing it to issue a statutory notice of sale on 21/6/2022 under section 90 of the *Land Act* and a subsequent notice under section 96 of the *Land Act* on 19/4/2023. It therefore contends that the plaintiffs are relying on the claims as an afterthought and to escape their loan obligations.
 12. On 20/4/2023, the 1st Plaintiff sought waiver of interest on the USD 9,130,000 facility, return of the unpaid principal of the USD 4,000,000 facility and discharge of the loan guarantee liability of the 2nd plaintiff. Through its response of 27/4/2023, the defendant denied the waiver of interest and informed the plaintiffs that the guarantee would only be discharged upon payment of the USD 4,000,000 secured by that guarantee.
 13. The defendant denies that it breached the warranties in the Agreements for Sale in respect of the charged properties. It faults the plaintiffs for failure to bring any claims of breach of the warranties within 12 months from the completion dates as provided for under Clause 6.1.17 of the Agreements. It denies that there are any breach of warranties, pointing to the fact that there were previous claims over



- the same property filed by the same claimant in the suit against the plaintiffs, Nancy Wanja Gatabaki that had been struck out by the Court. It confirmed that it filed ELC Petition Number E014 of 2024 which is pending, seeking to stop the Nairobi City County from illegally encroaching on the charged properties.
14. The Court has considered the application, the responses, the affidavit evidence, the parties' respective submissions and authorities cited. The issue for determination is whether the plaintiffs have met the threshold for the grant of the interlocutory injunction sought.
 15. The present application is made under Order 40 Rule 2 of the Civil Procedure Rules, which provides as follows gives jurisdiction to this Court to grant interlocutory injunctions. The principles which guide the Court in determining whether to grant an interlocutory injunction are well established.
 16. In Giella v Cassman Brown & Co Ltd, (1973) E.A 385, Spry J. set them out at page 360 as follows: -

“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.”
 17. The first condition to be established by the Plaintiffs is a *prima facie* case. In Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KLR defined *prima facie* case as follows: -

“So what is a *prima facie* case? I would say that in civil cases it is a case in 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.

...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.”
 18. In Nguruman Limited v Jan Bonde Nielsen & 2 others (Civil Appeal No. 77 of 2012) [2014] eKLR, the Court of Appeal held that: -

“... in considering whether or not a *prima facie* case has been established, the court does not hold a mini trial 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.”
 19. The plaintiffs submitted that they have established a *prima facie* case as their suit raises the following issues; whether the applicants were in a position to lodge any claims with the respondent for breach of warranty within 12 months from the Completion Date, yet the third-party claims over the six C properties (by Nancy Wanja Gatabaki and Nairobi City County) only came up in August and October, 2023, over three (3) years after the date of the Agreement (24th December, 2019); whether the respondent is absolved from liability for breach of warranty, merely because the events occasioning the breach of warranty occurred after lapse of the 12 months' period; whether it is just and equitable to allow the defendant to continue charging interest on the facilities and demanding payment of the same in the pendency of this case, ELC Case No. E075 of 2023 - Nancy Wanja Gatabaki & 2 Others v Sanyi Jituan Sensen Investment Ltd & 2 Others and ELC Petition No. E014 of 2024 Equity Bank



- Kenya Limited v Nairobi City County* and whether the defendant has a right to recover the facility issued to facilitate the purchase of the six C properties should the 1st plaintiff's ownership thereof be ultimately cancelled.
20. On the other hand, the defendant argued that the plaintiffs have not established a *prima facie* case because they confirmed that they signed the loan agreement and accepted the terms thereon; that there is no breach of warranty; that the plaintiffs defaulted prior to the ownership claim was filed and the encroachment and vacation notice was issued by the Nairobi City County and therefore there is no justification for the plaintiffs not to service the facility as agreed.
 21. From the Plaintiff, the plaintiffs' claim against the defendant is for fraud and misrepresentation in the sale of the six C properties while knowing that they were the subject of third party ownership claims and for breach of contract for failing to indemnify the 1st plaintiff against the third party claims that have arisen.
 22. It is not disputed that there is a third party claim for ownership of the property from which the six C properties which form part of the charged properties were excised. The plaintiffs annexed a copy of the Plaintiff in ELC No. E075 of 2023 instituted by Nancy Wanja Gatabaki, Josephine B. Gathoni Gatabaki and Esther Susan Wangari Gatabaki against the 1st plaintiff herein, Peter Kiarie Muraya and the Chief Land Registrar. The Plaintiffs claim that LR No. 5980/1, registered in the names of Nancy Wanja Gatabaki and her late husband, Samuel Mundati Gatabaki, was fraudulently subdivided and sold to the 1st plaintiff.
 23. The defendant denied that there was any breach of warranty, citing that there was previous claims over the same property that had been struck out by the Court. It referred the Court to a ruling of 30/11/2020 in High Court Civil Suit No. 30 of 2020 formerly ELC 364 of 2019 Nancy Gatabaki & 3 Others v Muga Developers Limited & 11 Others.
 24. I note from that ruling that the 2nd plaintiff was Nancy Wanja Gatabaki and the 8th defendant was the defendant bank. The suit involved LR No.s 5980 and 4508/1 or any purported amalgamations therefrom under a purported LR No. 28223. In that suit, the plaintiffs sought to annul all subdivisions, charges and dispositions in regard to the suit property on account of fraud.
 25. In that suit, the court noted that in a previous suit, HCCC 352 of 2011, the same Nancy Wanja Gatabaki claimed that the 1st to 6th defendant was engaged in illegal transactions without her notice, authority and consent. The transactions were the transfer of LR No. 5980/5/2 (LR No. 28223/2) and charge to I & M Bank and charge of LR No. 28222/3 to the 8th defendant therein without authority. Therefore, the Court found that the suit was res judicata as the subject matter of the former suit and that suit were the same and the previous suit was settled by consent dated 6/9/2011.
 26. The defendant also referred to a ruling of 2/11/2023 in ELC Case Number E176 of 2023 *Nancy Wanja Gatabaki & another v Pleng Limited & 14 others*. In that ruling, the Court also dismissed the suit because it was res judicata upon finding that the subject matter and the issues raised were similar to the previous suits.
 27. Nevertheless, at this juncture, the ownership claim against the plaintiffs, ELC No. E075 of 2023, is pending before the Environment and Land Court. Therefore, the Court is yet to determine whether there is any valid third party claim of ownership over LR No. 5980/1 from which the six C properties were excised. ELC Petition No. E014 of 2024 is also pending before the Court and the Court is yet to determine the validity of the encroachment/vacation notice issued by the Nairobi City County Government.



28. From the foregoing, one thing is clear. The defendant has all along since 2011 known that the said properties had ownership issues. It was a party in the 2011 suit. It knew all that transpired. The question is, can it hide behind the warranties in the sale agreements to avoid its obligation to act in good faith and make all the necessary disclosures? Had the plaintiff known what the defendant knew, would they have purchased the said properties?
29. With the aforesaid ownership wrangles, the defendant sold the said properties to the plaintiffs and more so, financed the purchase. In this Court's view, the plaintiffs have disclosed a *prima facie* case with a probability of success.
30. As to damages, the continued levying of interest would outstrip the value of the properties thereby putting them out of reach of the plaintiffs. That would lead to irreparable loss and damage.
31. As to the balance of convenience, the same tilts in favour of maintaining the status quo and preserving the properties.
32. Since the plaintiffs have not refused to service the facilities but have only prayed for the suspension of interest and levying of penalties, the Court is of the view that the application is merited. The Motion is allowed as prayed but with a caveat that any interest leviable shall remain suspended to await the outcome of the suit.

It is so ordered.

SIGNED AT NAIROBI THIS 27TH DAY OF JANUARY, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2025.

F. GIKONYO

JUDGE

