



**Kimani Ventures Limited v Absa Bank Limited (Commercial Case E558 of 2024)  
[2025] KEHC 4993 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4993 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E558 OF 2024**

**AA VISRAM, J**

**APRIL 24, 2025**

**BETWEEN**

**KIMANI VENTURES LIMITED ..... PLAINTIFF**

**AND**

**ABSA BANK LIMITED ..... DEFENDANT**

**RULING**

1. I have considered the Notice of Motion Application dated 16<sup>th</sup> September, 2024, together with the affidavit in support sworn on even date and replying affidavits 11<sup>th</sup> December, 2024, sworn in opposition to the same.
2. The Applicant has not denied that the Defendant/ Bank granted it various financial facilities and by way of a debenture dated 17<sup>th</sup> February, 2021; further debenture dated 12<sup>th</sup> April, 2021, and a charge dated 17<sup>th</sup> February, 2021, and further charge dated 19<sup>th</sup> April, 2022, for the purpose of securing financial accommodation in the amount of approximately Kshs. 354,000,0000/-. Evidence of the same are attached to the replying affidavit of the Bank as Exhibit SN-01.
3. The Applicant admitted that the debt remains due to the Bank, and the arrears presently owing is in the sum of approximately Kshs. 3,000,000,000/- giving rise to the impugned auction.
4. The Applicant however contended that the reason it has been unable to service the debt is because it was subjected to higher monthly installments arising from an increase in the rate of interest on its loan, and as a result, was unable to make payments as and when they fell due. In particular, the Applicant submitted that the rate of interest was increased from 13.8% to 20.25% over a period of time unlawfully.
5. The Bank, on the other hand, submitted that this was not the case, and that there was no evidence supporting the Applicant's allegation whatsoever. Counsel submitted that any increase in the rate of



- interest was lawful. The Respondent further pointed out that it had been open, on several occasions, to consider loan restructuring plans and proposals from the Applicant, but none was forthcoming.
6. The Applicant admitted that it defaulted on the loan in the year 2022, and defaulted once again in December 2023. Accordingly, on 19<sup>th</sup> April, 2024, the Bank issued the Applicant with the 90 days statutory notice pursuant to Section 90 of the Land Act 2012. Evidence of the same is found at Exhibit SN 02. The Applicant has not denied being issued with the same.
  7. The Applicant further admitted that it was unable to pay the full amount stipulated in the said notice. It's position was that the Bank had called in the entire amount of the debt due, which in it's view, was unlawful. The Bank, on the other hand, deposed that it was within its contractual rights to call in the entire debt in the event of default in accordance with the agreed terms of the debenture and relevant charge instruments. This is correct. Evidence of the same is found at Exhibit SN-01 and more particularly at page 15 of the documents, outlining the terms of the debenture, which I note, at clause 9.1.2, provides expressly for the enforcement in relation to security held by the Bank in the event of a default.
  8. Further, I note that on 1<sup>st</sup> August, 2024, the 40-day statutory notice to sell pursuant to Section 96 of the Land Act 2012 was issued by the Bank to the Applicant. The Applicant has not denied service of the same. The said redemption notice indicated that the sum due and owing to the Bank at the time, was the sum of Kshs. 149,301,231.90/-. The amount was not paid by the Applicant. Evidence of the said notice is found at Exhibit SN 03 of the Replying Affidavit.
  9. Finally, the 45- day Notice to Redeem under the Auctioneers Rules was issued on 17<sup>th</sup> September, 2024. The Applicant has not denied being issued with the same and evidence of the same is found at Exhibit SN04 of the replying affidavit.
  10. It is also evident that a valuation of the property was carried out by agents of the Bank on 7<sup>th</sup> May, 2024. This is under one year ago, to date, and the Applicant has not disputed the conclusions reached in the said report.
  11. I am satisfied, in light of the above, that the relevant statutory notices were duly served on the Applicant, and that the Bank's statutory powers of sale have crystalized in accordance with the law.
  12. Moreover, I would add that contrary to the submission by the Applicant, there is no requirement in law for the Bank to serve statutory notices afresh, or on more than one occasion, after the Applicant had resumed its monthly payments. This is especially so, where an Applicant fails to remedy, or to pay the entire amount stipulated in the statutory notice, as is the present case.
  13. Further, I do not think that a dispute in relation to the amount due to the Bank or a dispute concerning the correct amount of interest applicable to the facility is in itself an appropriate ground for injunction. The Applicant may still pursue such a claim by way of damages at the hearing of the main suit.
  14. In light of the above, I am satisfied that the Applicant has not met the threshold for a grant of injunction as set out in *Giella v Cassman Brown* [1973] EA 358, namely:
    - a. Establish his case only at a prima facie level,
    - b. Demonstrate irreparable injury that cannot be compensated by way of damages if a temporary injunction is not granted, and
    - c. Allay any doubts as to (b) by showing that the balance of convenience is in his favour.



15. In particular, I am satisfied that based on the facts set out above, the Applicant has failed to make out a prima facie case under the first limb, in accordance with *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR, namely “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 to call for an explanation or rebuttal from the latter.”
16. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles, which the Applicant is expected to surmount sequentially. Having failed to pass the first hurdle, the Applicant may not leap frog to the next and that brings the matter to an end.
17. Based on the reasons as set out above, I find that the Application is without merit. The same is accordingly dismissed with costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF APRIL, 2025**

**ALEEM VISRAM, FCI Arb**

**JUDGE**

In the presence of;

.....Court Assistant

.....for Plaintiff/Applicant

.....for Defendant/Respondent

