



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kuria v Equity Bank Kenya Limited & another (Commercial Case E217 of 2025)
[2025] KEHC 4377 (KLR) (Commercial and Tax) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E217 OF 2025**

AA VISRAM, J

APRIL 7, 2025

BETWEEN

MOSES KURIA APPLICANT

AND

EQUITY BANK KENYA LIMITED 1ST RESPONDENT

GRAHAM INVESTMENTS AUCTIONEERS 2ND RESPONDENT

RULING

1. I have considered the Notice of Motion Application dated 20th March, 2025, together with affidavit in support sworn on even date, the replying affidavit sworn on 2nd April, 2024, the rival submissions of the parties, and the applicable law.
2. The Applicant is seeking injunctive orders restraining the Defendants from selling by way of public auction, the Applicant's land, specifically, title: LR Kiamba/ Ruaka/ 366 pending the hearing and determination of the Application.
3. Based on the record before me, vide a letter of offer dated 15th March, 2018, the Applicant took out a credit facility with the Respondent in the sum of Kshs. 50,000,000/-.The said letter of offer, which includes the various terms of the offer is attached at Exhibit EBKL2 of the Respondent's replying affidavit.
4. It is also evident that the said facility was secured by way of a charge dated 18th April, 2018, in respect of the Title Numbers Kiambaa/Ruaka/3666 and Juja/Kiaura Block 12 (Nawell/Njemuwa)/469& Juja/Kiaura Block 12 (Nawell/Njemuwa) 470 ("the Properties") registered and in favour of the Bank over the said Properties, which are the subject matter of the Application. Evidence of the same is found at Exhibit EBLK 2 and 3 of the Respondent's replying affidavit.



5. Looking at the record, it is evident that the Applicant was unable to service the said loan, and therefore the facility fell into arrears. Evidence of the same is found at Exhibit EBLK 4 of the Respondent's affidavit. It is also worth noting that the Applicant has not denied the debt, but rather, has explained that the reason he was unable to service the loan was because he experienced difficulty developing the Properties during the Covid 19 Pandemic, which he deposed, caused a surge in the price of building materials; and further, because he fell sick during the period in question, and was admitted in hospital for rehabilitation of his leg which was damaged during an accident. The Applicant attached his medical summaries as evidence of the same. The same are marked as MK 3 and annexed to his supporting affidavit.
6. Further in brief rejoinder, Counsel raised orally, for the first time an issue relating to the amounts of the funds that may not have been disbursed by the Bank to the Applicant. The argument raised in oral submission do not appear in the grounds on the face of the Motion, and further, have not been deposed to by the Applicant in his supporting affidavit.
7. The record further shows that as at June 2022, the Applicant had stopped performing the contract for a prolonged period. At that time, the outstanding amount due to the Bank was approximately Kshs. 54, 278, 865/-.
8. As a result of the said default, the Respondent issued the Applicant with a 90 - day Statutory Notice pursuant to Section 90 of the Land Act 2012. Evidence of the same is found at Exhibit EBLK 5 of the replying affidavit. The Notice was served on 24th June, 2022, and was issued by registered post. Service in relation to the same has not been denied by the Applicant.
9. Further, I note that the 40 - day Statutory Notice to Sell pursuant to Section 96 of the Land Act 2012 was issued to the Applicant on 1st December, 2022, by way of registered post to the Applicant. The Applicant has not denied service of the same and evidence of the same is found at page 77 of Exhibit EBLK 5 of the replying affidavit.
10. Finally, the 45 days' Notice to Redeem under the Auctioneers rules was served on 4th December, 2024, by way of registered post. Evidence of the same is found at page 83 of EBLK5 of the replying affidavit.
11. The record shows that a valuation report dated 3rd December, 2024, was prepared in respect of the subject Properties, less than one year ago, at the present date. The Applicant has not disputed the conclusions reached in the said report.
12. Noting that the Applicant has not denied the debt, I turn to address his primary submission, which is, in short, that the parties had agreed on a repayment formula, and he ought to be afforded an opportunity to settle the debt in accordance with the same before the Properties are auctioned. Looking at the deposition of the Respondent, and the various exhibits, it is evident that the parties did in fact, attempt to reach a settlement, but that the Applicant was unable to comply with the terms reached and agreed.
13. The Respondent deposed that on 24th January, 2025, the Applicant agreed to settle the arrears by way of monthly payments of Kshs. 850,000/- per month, but was thereafter unable to do so.
14. On the other hand, the Applicant submitted that on 18th March, 2025, he made a payment of Kshs. 733,000/- towards the arrears. However, I take note that the said payment is less than the sum agreed to be paid between the parties, and based on the record, to date, no such appropriate payments have been made in accordance with the various agreement of the parties, prompting the Respondent to issue instructions to the 2nd Defendant to sell the subject Properties. Evidence of the correspondence



- between the Respondent and the Applicant in respect of the further default, and reminding the Applicant that payments were due, are found at Exhibit MK4 of the Applicant's supporting affidavit.
15. A further attempt to settle the debt prior to the intended auction took place on 21st March, 2025. The Respondent deposed that the parties renegotiated the terms of repayment, which terms included a lump sum payment by the Applicant of approximately Kshs. 6,466,000/-, to be paid by 28th March, 2025, and further lump sum payments to be made in the month of April 2025, and thereafter, several monthly payments. The Respondent deposed that no such payments were forthcoming, and that despite reducing the said terms into a consent agreement, intended to compromise the suit between the parties, the Applicant failed to sign the same after having agreed on the terms.
 16. As regards the argument raised in rejoinder that full amount of the loan had not been disbursed; this Court was unable to ascertain the truth of the same by simply looking at the annexures. Further, having raised the argument for the first time outside of the grounds contained in the Motion, or the supporting affidavit, the argument is merely a submission from the bar. In any event, questions relating to the amount of debt in dispute, are not, in my view, a sufficient ground for the grant of an injunction.
 17. 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.
 18. While I empathize with the Applicant noting that he suffered from health challenges, and was even hospitalized for a period of time between the year 2020 and 2021, unfortunately, the same is not a legal ground for the grant of the injunctive orders in circumstances such as the present.
 19. This is especially because, the Bank has carried out the process of recovery in accordance with the law, the debt is expressly admitted, remains due, and has been outstanding for a prolonged period of time. Further, it is evident that all efforts to renegotiate the terms of repayment and to compromise the matter in an amicable manner have failed. There is therefore no valid ground upon which the Bank ought to be restrained from exercising its statutory power of sale.
 20. Finally, I note that the prayers contained in the present Notice of Motion seek an interim injunction pending the hearing and determination of only the present Application. There are no further prayers seeking to restrain the Defendants, pending the hearing and determination of the main suit. The said prayers are therefore spent at this point. No further injunctive relief has been specifically prayed for in respect of the aftermath of the determination of this Application, which is when the upcoming intended auction is scheduled for, namely 8th April, 2025. This would appear to be an oversight on behalf of the Applicant.
 21. In any event, based on the circumstances as described above, I find the Applicant has not met the threshold for a grant of an injunction pending the hearing and determination of both the present Application and the main suit, based on the applicable law 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. Ally any doubts as to (b) by showing that the balance of convenience is in his favour.
 22. 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.”

23. 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.
24. 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 7TH DAY OF APRIL, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

.....Court Assistant

..... Applicant

.....1st Respondent

.....2nd Respondent

