



**Mineral Masters Limited v Simple Pay Capital Limited (Commercial Suit E511 of 2022)
[2025] KEHC 4310 (KLR) (Commercial and Tax) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E511 OF 2022**

NW SIFUNA, J

APRIL 4, 2025

BETWEEN

MINERAL MASTERS LIMITED PLAINTIFF

AND

SIMPLE PAY CAPITAL LIMITED DEFENDANT

RULING

1. For determination is the plaintiff's notice of motion application dated 19th December 2022 filed pursuant to section 1A and 3A of the *Civil Procedure Act* and orders 40(1), (2) and order 51 rules 1 of the *Civil Procedure Rules 2010*. The plaintiff sought the following orders:
 1. Spent.
 2. Spent
 3. Spent
 4. A temporary order of injunction restraining the Defendant/Respondent either by themselves or their appointed agents, servants, assignees and/or any other persons from auctioning, selling, disposing, transferring and/or in any other manner interfering with the parcel of land known as Land Reference No. 1338/130 pending the hearing and determination of this suit;
 5. A temporary order of injunction restraining the Defendant/Respondent either by themselves or their appointed agents, servants, assignees and/or any other persons from exercising any of the remedies available to it as unpaid chargee pending the hearing and determination of this suit;



6. An order compelling the Defendant/Respondent to render proper accounts of the loan facility advanced to the Plaintiff/Applicant.
 7. Such further orders or directions that it may deem fit in the interest of justice;
 8. The costs of this Application.
2. The grounds of the application were that the defendant breached the terms of the loan agreement as it delayed the loan disbursement, disbursed the loan in tranches, failed to provide proper accounts for loan performance and charged interest exceeding the principal loan amount, contrary to Section 44A of the Banking Act.
 3. The plaintiff further alleged that the defendant acted arbitrarily by imposing unilateral interest and penalties outside the loan agreement, altering timelines contrary to the agreement, making illegal and unjustified deductions and demanding recovery of unlawful interest.
 4. That the claimed outstanding loan amount of Ksh 24,041,559/66 lacks proper justification due to incomplete accounts and the scheduled auction is unlawful as the demanded amount exceeds the principal loan advanced and proper account statements have not been provided, despite partial repayment. The plaintiff further argued that granting the interim orders would not prejudice the defendant.
 5. In opposition, the defendant filed a replying affidavit sworn on 6th February 2023 by Yashika Sagar, its operations manager. He averred that the defendant advanced to the plaintiff Ksh 10,000,000= on 21st February 2022 under a loan agreement requiring repayment within 9 months at a 10% monthly interest rate and that the plaintiff provided security for the loan, including guarantees and property charges.
 6. It was contended that the plaintiff failed to repay the loan as agreed which led the defendant to issue a demand letter in August 2022, and the plaintiff admitted the default in a letter dated 2nd September 2022, promising repayment but failing to honor it.
 7. Mr. Sagar in his affidavit stated that the plaintiff admitted breaching the loan terms and failing to make repayments and that the application lacks merit and was filed in bad faith, primarily to delay repayment without valid grounds.
 8. The defendant emphasized that it is entitled to enforce its rights under the contract, including charging default interest and initiating recovery actions and that that the plaintiff has failed to meet the threshold for an injunction, as it does not have a prima facie case, will not suffer irreparable harm, and the balance of convenience favors the defendant.

Analysis and Determination:

9. A background of this matter is that sometime in December 2021, the defendant advanced a loan facility of Ksh 10,000,000= to the plaintiff. The loan was to be repaid within a period of 9 months every 30th day of the month from the date of advance. The loan was secured by inter alia, a charge over the suit property. The letter of offer, loan agreement and security documents are annexed to the replying affidavit sworn by the defendant's operations manager.
10. The defendant stated that the plaintiff had failed to settle the loan amount and/or pay the installments as required which led it to demand payment and eventually pursue the sale of the suit property to recover the loan arrears.



11. What is now before the court is an application essentially seeking a temporary injunction to restrain the defendant from selling and/or interfering in any manner with the parcel of land known as Land Reference No.1338/130 (the suit property), pending the determination of this suit.
12. This is an application for an interim injunction. In *Giella v. Cassman Brown* [1973] EA 358, the principles to be considered before granting an interim injunction were stated as follows:
 - i. The applicant must prove a prima facie case with a probability of success.
 - ii. The applicant must illustrate that he will suffer irreparable loss and damage if the injunction is not granted.
 - iii. If the court is in doubt, it will determine the matter on a balance of convenience.
13. The court will consider the first limb on whether the plaintiff has illustrated that they have a prima facie case with a probability of success.
14. In *Mrao Ltd v. First American Bank Of Kenya Ltd & 2 Others* a prima facie case was described as follows:

“... 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 to call for an explanation or rebuttal from the latter.”
15. In this case, the defendant’s counsel issued a demand letter to the plaintiff dated 30th August 2022, demanding the payment of Ksh 15,379,925= as outstanding loan arrears at the time. In response to the said demand, the defendant wrote a letter dated 2nd September 2022 to the plaintiff stating the following:

“Kindly be notified that it has been our intention to settle the outstanding loan were it not for some business challenges ... Hence we kindly request for up to 30th September to make the payment.” [Copies of the letter are produced in the defendant’s replying affidavit].
16. The plaintiff has unequivocally admitted to failing to comply with the repayment terms of the loan agreement and to being indebted to the defendant.
17. I am therefore not convinced that the plaintiff has established a prima facie case as set out in the Mrao case. Although the plaintiff contested the interest rate charged by the defendant, it has not provided evidence in support of this. Further, as has been held in various cases in our jurisdiction, this is not a sufficient ground to grant an injunction to prevent a chargee from the exercise of its statutory power of sale.
18. This position was also held in the case of *Stephen Kipkiyeny Tarus v. NCBA Bank Kenya & Garam Investments Auctioneers* [2020] KEHC 836 (KLR) where the court stated as follows:

“I also note that the applicant does not deny that he is truly indebted to the respondent. I am therefore not satisfied that the applicant has made out a prima facie case with a probability of success as enunciated in the case of *Giella v. Cassman Brown & Co Ltd.*”
19. The conditions set out in *Giella (supra)* are sequential. Since the plaintiff has failed to establish a prima facie case there is no need to consider the other limbs.



20. This was held in the Court of Appeal case of *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR where it was stated as follows:

“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

21. The upshot of the foregoing, is that the Application fails, and is hereby dismissed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF APRIL 2025.

PROF (DR) NIXON SIFUNA

JUDGE

