



REPUBLIC OF KENYA



**Anjara Homes Limited & 3 others v Diamond Trust Bank Kenya Limited (Civil Case E323 of 2024) [2025] KEHC 6319 (KLR) (Commercial and Tax) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6319 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E323 OF 2024**

**F GIKONYO, J**

**MAY 8, 2025**

**BETWEEN**

**ANJARA HOMES LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
KINAR KENT ..... 2<sup>ND</sup> PLAINTIFF  
MANJIT KENT ..... 3<sup>RD</sup> PLAINTIFF  
RAJESH KENT ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**DIAMOND TRUST BANK KENYA LIMITED ..... DEFENDANT**

**RULING**

1. The plaintiffs' Notice of Motion dated 11<sup>th</sup> June 2024 is seeking an interim injunction to restrain the defendant from selling all that property known as Land Reference Number 3734/1429 Nairobi, whether by public auction or private treaty, pending the hearing and determination of the suit.
2. The application is based on the grounds set out in motion, the affidavits sworn by the 4<sup>th</sup> plaintiff and the 1<sup>st</sup> plaintiff's director, Rajesh Kent, on 11<sup>th</sup> June 2024 and 4<sup>th</sup> November 2024 and augmented through written submissions dated 31<sup>st</sup> October 2024.
3. The deponent averred that the 1<sup>st</sup> plaintiff is a family company and the registered owner of the subject property. In June 2014, the plaintiffs approached the defendant to advance the 1<sup>st</sup> plaintiff a loan facility to finance the development of 4 townhouses. The loan facility was secured by a charge over the subject property and personal guarantees by the directors. The defendant advanced the 1<sup>st</sup> plaintiff Kshs. 120,000,000/-. It was agreed that there would be a moratorium for 12 months after which the 1<sup>st</sup> plaintiff would start repayment of the loan at a monthly payment of Kshs. 1,045,000/-. It was also



- agreed that the repayments would come from the rent that the prospective tenants would pay once the development was complete.
4. The deponent also averred that the project was completed in 2016 and duly rented out. The plaintiffs began making payments to the defendant by channelling rent to the loan account. However, due to the COVID-19 epidemic, some of the tenants either lost their jobs or were unable to continue with the tenancy, and the 1<sup>st</sup> plaintiff was unable to keep up with the repayments and had to source for money elsewhere. This led to the loan attracting high interest rates and penalties and ultimately the 1<sup>st</sup> plaintiff had to seek for a review of the facility with the intention to have it restructured.
  5. The deponent further averred that due to the economic downturn after the COVID-19 pandemic, the 1<sup>st</sup> plaintiff struggled with repayments as it could not get regular paying tenants. This led to the decision to dispose of one of the townhouses, aimed at regularizing the monthly repayments and offsetting a huge part of the principal sum. It sought and obtained the defendant's permission and instructed an agent who sourced for a purchaser who was willing to pay Kshs. 80,000,000/- for the townhouse. However, the prospective purchaser changed his mind due to the floods of March to May 2024, which flooded the properties to the extent that the lower floors were underwater.
  6. It was deposed that thereafter, the defendant issued a 90-day notice dated 1<sup>st</sup> November 2023. The plaintiffs once again approached the defendant and sought more time to catch up with the monthly repayment arrears. The plaintiffs held a meeting with the defendant's officials on 25<sup>th</sup> May 2024 as the 1<sup>st</sup> plaintiff was negotiating for funds which took longer but at the time of filing of this suit is at an advanced stage.
  7. It was also deposed that the auctioneers advertised the property for sale in the Daily Nation of 3<sup>rd</sup> June 2024. The plaintiffs contended that this is the only time the advertisement was made and by the auctioneers and they have not marketed the property in any other forum so as to attract any serious prospective purchaser. They also contended that by not doing so, the auctioneers and the defendant did not act in the best interests of the 1<sup>st</sup> plaintiff.
  8. The plaintiffs, therefore, urged the court to issue the temporary injunction as the defendant is seeking to sell by public auction a property whose value far exceeds the liability of the 1<sup>st</sup> plaintiff. They also pointed out that the 1<sup>st</sup> plaintiff has made a reasonable offer to offset its liability to the defendant. They asserted that it is in the interest of justice for the intended sale to be stopped awaiting the court's decision on the issue.
  9. The plaintiffs postulated that they would be prejudiced if the public auction is allowed to proceed as their suit will be overtaken by events and will be a mere academic exercise. They further asserted that the suit has been brought without undue delay in the circumstances; that they have a strong suit with high chances of success; that the 1<sup>st</sup> plaintiff is likely to suffer loss incapable of being compensated by way of damages and that the balance of convenience lies in favour of the plaintiffs as compared to the defendant.
  10. The plaintiffs submitted that they have satisfied the conditions for the grant of the temporary injunction. They relied on *East Africa Industries v Trufoods* [1972] EA 420, *Giella v Cassman Brown & Company Limited* [1972] EA 358, *Nguruman Limited v Jan Bonde Nielsen & 2 Other* [2014] eKLR, *Mrao Limited v First Amercian Bank Of Kenya Limited & 2 Other* [2003] KLR 125, *Lucy Nungari Ngigi & 4 Others v National Bank Of Kenya And Another* [eKLR], *Joseph Siro Mosiomo v Housing Finance Company Of Kenya Nairobi HCCC No. 265 Of 2007* [2008] eKLR, *Esso Kenya Limited v Mark Makwata Okiya, Civil Appeal No. 69 Of 1991* and *First Choice Mega Store Limited v Ecobank Kenya Limited* [2017] eKLR.



## Response

11. The defendant opposed the application through a replying affidavit sworn by its debt recovery officer, Faith Ndonga on 5<sup>th</sup> July 2024 and written submissions dated 14<sup>th</sup> November 2024.
12. The defendant's case is that it extended various facilities to the 1<sup>st</sup> plaintiff, secured by a charge over Land Reference Number 3734/1429 Nairobi [the charged property]. The facilities were amalgamated into one term loan facility of Kshs. 78,882,929/- through a letter of offer dated 31<sup>st</sup> August 2022. The amalgamated loan facility was secured by the existing security. In breach of the express terms of the facilities, the 1<sup>st</sup> plaintiff failed to pay on time and fell into arrears of Kshs. 6,893,355.73 as of 1<sup>st</sup> November 2023. Despite demand, the 1<sup>st</sup> plaintiff persisted with the default, leading to the issuance of a 90 day statutory notice of sale dated 1<sup>st</sup> November 2023.
13. Ms. Ndonga deposed that the 1<sup>st</sup> plaintiff failed to repay, and the defendant then issued a notification of sale dated 14<sup>th</sup> February 2024 under Section 96[2] of the *Land Act*. Upon lapse of the notice, the defendant instructed Dalali Traders Auctioneers to sell the properties by way of public auction after issuing a redemption notice. Dalali served the 1<sup>st</sup> plaintiff with a 45 day auctioneer's notice dated 3<sup>rd</sup> April 2024 together with a notification of sale of the same date pursuant to Rule 15 of the Auctioneer's Rules.
14. Ms. Ndonga also deposed that as of 4<sup>th</sup> July 2024, the principal and interest in arrears on the amalgamated loan facility is Kshs. 20,098,219.03/-. The defendant advertised the suit property on 3<sup>rd</sup> June 2024 indicating that the auction sale would be concluded on 18<sup>th</sup> June 2024.
15. The defendant asserted that its power to exercise its statutory power of sale has crystallised owing to the 1<sup>st</sup> plaintiff's failure to repay the outstanding amount despite demand and notices issued. It also asserted that there is no prima facie case.
16. It highlighted that the 1<sup>st</sup> plaintiff has admitted that it is in arrears and to having failed to pay the loan as and when it fell due. It asserted that even if the 1<sup>st</sup> plaintiff denied that it was in arrears, a dispute on accounts cannot form the basis for the grant of an injunction to restrain a chargee's exercise of its statutory power of sale where the borrower is still indebted to the chargee.
17. The defendant contended that the plaintiff's default preceded the floods that occurred in March – May 2024 as the statutory notices were issued on 1<sup>st</sup> November 2023 and 14<sup>th</sup> February 2024. It also contended that the plaintiff's application is based on material falsehoods as the disposal of the property is being undertaken lawfully. It asserted that once a property is charged as security for a loan, it becomes a commodity for sale whose loss can be readily quantified and compensated in the event of loss and that it is a financial institution of repute capable of meeting any award of damages.
18. The defendant further submitted that the plaintiffs' application is an abuse of the court process for material non-disclosure. It further contended that the application has been made after the expiry of the statutory notices and is meant to scuttle the realization of the charged property and that the plaintiffs' actions are unconscionable and undeserving of the equitable reliefs sought.
19. The defendant relied on Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] Vol. EA 86, National Bank of Kenya Ltd v PipePlastic Samkolit [K] Ltd and Another [2002] EA 503, Gatobu M'Ibuutu Karatho v Christopher Muriithi Kubai [2014] eKLR, Housing Finance Company of Kenya v Ngege Kitson Mondo [2006] eKLR, Daniel Kamau Mugambi v Housing Finance Company of Kenya Limited [2006] eKLR, Francis J. K. Ichatha v Housing Finance Company



of Kenya Limited [HCCC No. 414 of 2004]; National Bank of Kenya Ltd & 2 Others v Sam-Con Ltd [Nairobi [CA No 154 of 2003](#)] and Jane Wanja Miriti v Fina Bank Limited & another [2012] eKLR.

## Analysis and Determination

### Issues

20. Have the plaintiffs made out a case for the grant of a temporary injunction?

### The threshold

21. The court seeks the justice the case deserves whilst asking the traditional questions stated in the *Giella v Cassman Brown* [supra], to wit: a) whether the applicant has established a prima facie case with a probability of success; b) whether irreparable harm will occur that cannot be compensated by damages; and c) in case of doubt, where does the balance of convenience?
22. In the *Mrao* case, prima facie case: -

“...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 but 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.”
23. The plaintiff submitted that it has established a prima facie case in that an amount is outstanding under the security; but given time, it would be able to dispose of one of the units on the property which would pay off the debt and that such disposal can be carried out within a reasonable time and it has made full disclosure on why the instalments could not be met and therefore why the court should exercise its wide discretion by allowing the deferment of the payment.
24. On the other hand, the defendant argued that the plaintiffs had not established a prima facie case with a probability of success. This is because the plaintiffs have admitted that the 1<sup>st</sup> plaintiff defaulted in servicing the loan facilities as agreed. It contended that this is a clear case of default, thus, there exists no basis for the granting of an injunction to prevent a mortgagee from exercising its statutory power of sale unless the sum due to the mortgagee is paid in court.
25. The plaintiffs have admitted that the 1<sup>st</sup> plaintiff defaulted on the loan. The plaintiffs have indicated that they were unable to repay the monthly payments due to the COVID 19 pandemic and the economic downturn that followed as well as the flooding of March – May 2024.
26. However, the evidence shows that the plaintiff’s default persisted long after the COVID-19 Pandemic, a revision of the loan terms and preceded the floods that occurred in March – May 2024. The plaintiffs acknowledged that the defendant issued numerous demands for payment and that due to persistent default the defendant issued its statutory notice of sale 1<sup>st</sup> November 2023.
27. The other core complaint by the plaintiffs is that the auctioneers only advertised the property for sale by public auction once in the Daily Nation on 3<sup>rd</sup> June 2024. The plaintiffs contended that this is the only time the advertisement was made and by the auctioneers, and they have not marketed the property in any other forum so as to attract any serious prospective purchaser.
28. The defendant rebutted this by producing copies of the 45-day auctioneer’s notice dated 3<sup>rd</sup> April 2024, together with a notification of sale of the same date issued by the auctioneer. The advertisement for



the sale of the property was published in the Daily Nation on 3<sup>rd</sup> June 2024 as per Rule 16 [2] of the Auctioneer's Rules.

29. The notification of sale issued by the auctioneer indicates a forced sale value of Kshs. 243,000,000/-, which conforms with the "market value with special assumptions" as reflected in the valuation prepared by Redfearn Valuers at the defendant's own instruction and produced by the plaintiffs. This fulfils the requirement to disclose the reserve price. Hence, the plaintiffs' apprehension that the property may be sold at a substantial undervalue remains, at this stage, speculative.
30. Given the foregoing, I am not satisfied that the plaintiff has established a prima facie case with a probability of success.
31. In line with the holding of the Court of Appeal in Nguruman Limited v Jan Bonde Nielsen & 2 Others, Civil Appeal No. 77 of 2012 [2014] eKLR, where the applicant fails to establish a prima facie case, the court need not consider the remaining two limbs of irreparable injury and balance of convenience.
32. Accordingly, the application dated June 11, 2024 lacks merit and is dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE  
APPLICATION THIS 8<sup>TH</sup> DAY OF MAY, 2025**

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**F. GIKONYO M.**

**JUDGE**

In the presence of: -

Mungu for Plaintiff/Applicant

Muriungi holding brief Kisinga for Respondent

CA - Kinyua

