



Citigates Developers Limited & another v 1870 West Limited & another (Civil Suit E725 of 2024) [2025] KEHC 5630 (KLR) (Commercial and Tax) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E725 OF 2024
JWW MONG'ARE, J
MAY 5, 2025**

BETWEEN

CITIGATES DEVELOPERS LIMITED 1ST PLAINTIFF

NABAKI AFRICA LIMITED 2ND PLAINTIFF

AND

1870 WEST LIMITED 1ST DEFENDANT

HASS CONSULT REAL ESTATE LIMITED 2ND DEFENDANT

RULING

1. What is before this court is a Notice of Motion Application filed under a Certificate of Urgency and brought under sections 1A, 3 and 3A of the *Civil Procedure Act* and Order 40 Rule 1 (a) of the Civil Procedure Rules seeking the following orders:-
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to grant prayer 2 pending the hearing and determination of this suit.
 - d. That costs of this application be provided for.
2. The application is supported by the grounds set out on its face and the supporting affidavit of Njama Wambugu sworn on 2nd December 2024. It is opposed and the Respondents have filed a replying affidavit sworn by Farhana Hassanali on 17th December 2024. On the directions of the court, both parties have filed written submissions.



3. It is the Applicant's case that this court should grant an interim injunction restraining both Defendants either by themselves, their agents, servants and or employees from advertising or offering for sale or in any way dealing with the property known as Apartments Number AXX6 and B3X1 in the development known as 1870 West on Title Number Nairobi/Block 7/XX3 and LR No. 1870/IX/172("the suit properties") pending the hearing and determination of the present suit.

Analysis and Determination.

4. I have carefully considered the Application before this court and the supporting affidavit filed on behalf of the Applicant. Similarly, I have considered the replying affidavit filed in opposition to this application. In addition, I have also looked at the rival submissions filed the parties and I note that only one issue arises for determination by this court, to wit, whether this court should grant the temporary order of injunction sought herein to the Plaintiff.
5. I do not think it is in dispute that for an order of injunction to issue, the Plaintiff is required to satisfy the conditions set out in the case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 by demonstrating a prima facie case with a probability of success, that it will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if it does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR))
6. The parties also agree that what constitutes "a prima facie case" was set out by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) as follows:

A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." It is a case 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.
7. A prima facie case flows from what has been pleaded in the plaint. Both parties agree that indeed the Applicant and the 1st Defendant entered into an agreement for purchase of the suit properties under terms that were set out in the letters of offer for the two apartments and later reduced into an agreement. The only point of departure is whether the Plaintiff should continue to pay the agreed contractual price as per the letters of offer that set prices from an off-plan development point of view or the new prices being imposed by the Defendants now that it is accused of having breached the original terms. I am therefore satisfied that on a balance of probabilities, the Plaintiff has established that it has a prima facie case.
8. Guided by the courts in the case of *Nguruman Limited*(supra), before a court can grant an interim injunction, it must be satisfied that the applicant stands to suffer irreparable injury not capable of being remedied by damages. Both parties agree that pursuant to the letters of offer and the subsequent agreements for lease, the Applicants have made substantial payments towards the purchase of the suit properties. From the pleadings the court notes in respect of the 1st Applicant, the apartment described as A1806 the agreed purchase price was Kshs.18,139,000/=. It is not in dispute that the 1st Applicant has made substantial payments and continues to do so and has thus far paid Kshs.11,831,460/= at the time of filing this suit. While for the second apartment known as B301 a sum of Kshs.5,000,000/= has been paid by the 2nd Applicant, from a purchase price agreement Kshs.7,397,000/=. The Applicants



have urged the court to be guided by the decision in Jubiland ingrevia limited v Gantrade Uganda Limited (2023)eKLR where the court defined irreparable harm as follows;-“by the term irreparable harm is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot be possibly repaired and the fact that an applicant may have a right to recover damages is no objection to the exercise of jurisdiction of injunction, if this right cannot be adequately protected or vindicated by damages. Even the injury that is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question.”

9. I have considered the submissions by both parties. I note that the Defendants admit that once the Applicants were notified of being in breach they made an attempt to remedy the same by making further payments. I also note that the applicants aver that they are within the scheduled payments as per the agreements and are keen to fulfil their part of the agreements if given an opportunity to do so. I find therefore that if these orders are not granted, the applicants stand to suffer irreparable harm as there is no guarantee that they will be able to acquire similar properties at the same location for the value for which the suit properties were offered to them. For this reason, I find that the applicants have satisfied this requirement for a grant of an interim order of injunction.
10. It is clear to me that the Respondents have benefitted from the funds paid to them by the Applicants to construct the building from whence the suit properties are situated. To allow them to terminate the contract at this stage and offer the apartments constructed with funds from the applicants to other new buyers for more value will visit an injustice on the Plaintiffs. The sum total of my findings is that the balance of convenience tilts towards granting the orders sought.
11. In conclusion I find and hold that the Plaintiffs have established a case for a grant of interim injunction and I allow the application as prayed with costs of to the Plaintiffs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MAY 2025

J.W.W. MONG'ARE

JUDGE

