



**Maimba v Gulf African Bank (Kenya) Limited (Commercial Case E226 of 2024)
[2025] KEHC 6690 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E226 OF 2024
JWW MONG'ARE, J
MAY 26, 2025**

BETWEEN

JOHN MUITHE MAIMBA PLAINTIFF

AND

GULF AFRICAN BANK (KENYA) LIMITED DEFENDANT

RULING

1. It is common ground that the parties have a bank and customer relationship as the Plaintiff holds an account in the Defendant's ("the Bank") Kenyatta Avenue Branch. Sometime in September 2019, the Plaintiff approached the Bank and after deliberations, the Bank agreed to extend him a facility amounting to Kshs.89,871,924.00/= for purposes of developing the commercial building on his parcel of land, LR No. Loc.11/Maragi/116, Wanjoya Area, Murang'a County. As per the Facility letter dated 31st October 2019 that was varied on various dates, the facility was to be secured by inter alia, charges over the properties, Loc.11/Maragi/116(Muranga), LR No.209/9692(Huruma Estate) and Title No. Nairobi/Block 145/235(Riverside Area) ("the suit properties").
2. Over time, the Plaintiff defaulted in making the monthly loan repayments and when they fell due, prompting the issuance of statutory notices by the Bank which evinced its intention to sell the suit properties. To forestall the sale, the Plaintiff has filed the present suit together with the application dated 26th April 2024 which is anchored on grounds set out on its face and the supporting affidavit of the Plaintiff sworn on the same date. It is opposed by the Bank through the replying affidavit of its Legal Officer, LAWI SATO, sworn on 6th May 2024.
3. The court directed that the application be canvassed by way of written submissions, which are on record and which, together with the pleadings, I have considered and I will be making relevant references to in my analysis and determination below.



Analysis and Determination

4. From the application and the parties' submissions, the main issue for the court's determination is whether the Plaintiff has met the threshold to be granted an injunction and whether the Bank should be directed to accept the Plaintiff's payment plan for the outstanding loan. As submitted by the Plaintiff, the conditions required to be satisfied by him for an injunction to be granted were set out in the case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358. The Plaintiff is required to demonstrate a prima facie case with a probability of success, that he 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 the Plaintiff 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)).
5. The Plaintiff submits that he has met the threshold for the grant of an injunction as he is challenging the manner in which the Bank exercised its statutory power of sale as no proper notice was served, that it instructed two firms of auctioneers to recover the same debt and that two advertisements were issued over the same. In response, the Bank depones that all the requisite notices were duly issued via email and hard copies delivered by registered post. Going through the record, I note that the notices were sent to the addresses P.O Box 54954-00200 Nairobi, and P.O Box 4075-00200 Nairobi, and the email address: drmainbajohn@gmail.com. I note that the said addresses are similar to those indicated in the Facility Letter and the Plaintiff's letter dated 14th February 2024 annexed in his deposition. The Bank has also annexed a list of the letters sent out by the Postal Corporation of Kenya. The aforementioned is prima facie proof that the notices were served upon the Plaintiff as the addresses admittedly belong to him and the postage list confirms that they were received or deemed to have been received by him (see *Nyangilo Ochieng & another v Fanuel B. Ochieng & 2 others* [1996] KECA 205 (KLR)). Thus, the Plaintiff cannot state that he never received the Notices and this ground fails.
6. On the ground that the Bank instructed more than one auctioneer to pursue the same debt, I have gone through the Auctioneers Rules and I find no restriction on the number of auctioneers that can be appointed by the Bank to recover the debt. I agree with the Bank's submission that there is no fault in it appointing three different firms of auctioneers to issue the requisite redemption notices and notifications of sale for three suit properties located in different locations. What is important is that the auctioneers adhere to the clear, explicit and peremptory terms and steps enumerated under the Rules, which the Plaintiff has not faulted. This ground by the Plaintiff therefore fails.
7. With the above findings, the Plaintiff has failed to demonstrate a prima facie case. He admittedly remains indebted to the Bank even after the statutory notices have been issued and served upon him and he has failed to redeem the suit properties after being issued with the redemption notices and notifications for sale. In line with the dicta, in *Nguruman* (supra), his quest for an injunction ends at this point. Even if I am to consider his other averments that the suit properties should not be sold as the debt that remains is minimal and that the properties generate income, I am in agreement with the Bank's submission that once a property had been offered as security, it becomes a commodity of sale in the event of default. Whereas the Plaintiff submits that the suit properties are of substantial value to him, there is no property, however sentimental or peculiar, that is incapable of being valued and damages awarded for it (see *Maina & another v Equity Bank Limited & 2 others* [2023] KEHC 23538 (KLR)).



8. The Plaintiff has also contended that given time, he will be able to clear the outstanding arrears and seeks the court to direct the Bank to accept his payment plan/proposal. However, whereas I can empathize with the Plaintiff's plight and note his efforts to repay the debt, this court has stated time without number that it cannot force Banks to accept payment proposals of borrowers. It is not the business of courts to rewrite contracts between parties and parties are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved (See Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR) The primary task of the court is to construe the contract and any terms implied in it and as such, it cannot force parties into a bargain as it is not a matter of an entitlement bestowed upon the Plaintiff, whether by statute or by contract (Muiga Enterprises Limited v Kenya Commercial Bank Limited [2016] KEHC 8509 (KLR). It is for these reasons that the court cannot compel the Bank to accept the Plaintiff's payment proposal.

Conclusion and Disposition

9. The upshot is that the Plaintiff's application dated 26th April 2024 has no merit and the same is dismissed with costs. The Interim Orders in place are hereby discharged forthwith.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Mr. Mwachofi for the Plaintiff/Applicant.
2. Mr. Ogunde for the Defendant/Respondent.
3. Amos- Court Assistant

