



Villa Windows Limited v Bank of Baroda (Kenya) Limited (Commercial Suit E484 of 2024) [2025] KEHC 6714 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL SUIT E484 OF 2024**

JWW MONG'ARE, J

MAY 26, 2025

BETWEEN

VILLA WINDOWS LIMITED PLAINTIFF

AND

BANK OF BARODA (KENYA) LIMITED DEFENDANT

RULING

1. By a Notice of Motion application filed on 16th August 2024 the Plaintiff has moved this Honourable Court seeking the following orders: -
 1. Spent
 2. Spent
 3. A temporary injunction be issued exparte in the first instance, restraining the Defendant/respondent by itself. Its agents, servants, legal representatives and/or administrators and any other person whether body legal or natural from advertising, selling and /or disposing off all that property known as L.R. No. 209/16589 I.R No. 102071/1 located in Industrial area, Nairobi, pending the hearing and final determination of the suit, and
 4. Costs of this application be provided for.
2. The application is supported by the grounds set out on its face and the supporting affidavit and a supplementary affidavit of Mr. Karsan Harji Ragh wantsworn on 16th august 2024 and 14th November 2024 respectively. The application is opposed and the Respondent has filed a replying affidavit sworn by Mr. Alfred Arunga on 3rd September 2024. Both parties filed written submissions which I have considered.



3. 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 it has 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)).
4. 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.”
5. A prima facie case flows from what has been pleaded in the plaint. The Plaintiff has admitted in its plaint filed before this court on 16th August 2024 that it guaranteed a loan to its sister company, Structural Construction (International) Limited and offered its property known as L.R No. 209/16589(L.R No.102071/1) located in Industrial area as security for the loans advanced by the Defendant on various dates between 2016 and 2020. The Plaintiff has admitted that the projects being undertaken by the sister company ran into financial headwinds and as a result and pursuant to an arbitration clause in the agreement between its sister company and a third party, arbitral proceedings commenced which resulted in an arbitral award in its favour and the same was adopted as an order of the court vide Misc. Appl Case No. E331 of 2021.
6. Flowing from the affidavit in support of the application, the Plaintiff admits having been issued with the 45-day notice of redemption by Keysian Auctioneers but denies having been served with the mandatory 90 day and 40 day Statutory Notices as per the requirements of the *Land Act*. The Plaintiff has also raised issue with the declared value of the suit property and argues that it is the intention of the Defendant to sell the property below market value and accuses the Defendant of failure to conduct a recent valuation of the property before offering the same for sale.
7. In opposing this application, the Defendant asserts that the Plaintiff has all along been aware of the default position of the loan and indeed it was served with the relevant statutory notices vide registered post and in accordance with the terms of the charge. The Defendant has demonstrated, by attaching a certificate of posting as evidence to the affidavit in response, that the said letters were sent to the plaintiff vide its postal address P.O Box Number 75435-0020 Nairobi which postal address is replicated in the supporting affidavit of the Plaintiff. This postal address is also the same one in the several offer letters attached to both the affidavits of the Applicant and the Replying affidavits of the Defendant. I note that the Plaintiff has not denied that this postal address still belongs to it. I am satisfied therefore that the Plaintiff was properly issued with the relevant statutory notices in accordance with the *Land Act*.
8. I have carefully considered the arguments by both parties. I note that the Plaintiff in admitting its indebtedness to the Defendant has urged the court to allow it to pay the outstanding debt once it enforces the arbitral award in its favour in Misc. Appl. Case No. 331 of 2021. This confirms to the court that the Plaintiff has all along been aware that the loans advanced to its sister company were in arrears. As argued correctly by the Defendant, I note that the proceedings in the said application are



between Structural Construction International Ltd and Prabhakai Developers Ltd. I find that there is not demonstrated that the resultant award from this suit has been assigned to the Defendant or in what form the Plaintiff intends to pass off the said award to the Defendant.

9. I find therefore that the Plaintiff has failed to demonstrate that it has a prima facie case with a likelihood of success to warrant this court to grant the orders sought. In line with the court of appeal directions in the case of *Nguruman(supra)*, the court upon being satisfied that the Plaintiff has failed to establish a prima facie case, need not considered the two other parameters set out in *Giella(supra)* to wit, whether the Applicant will stand to suffer irreparable loss or in whose favour the balance of convenience tilts.
10. In conclusion I find and hold that the application before this court is without merit and the same is hereby dismissed with costs to the Defendant. It is so ordered.

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:-

Mr. Maranga for the Plaintiff/Applicant.

Mr. Mwangi for the Defendant/Respondent.

Amos- Court Assistant

