



REPUBLIC OF KENYA



**KENYA LAW**  
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**Adrian Kenya Limited v Citibank NA Kenya (Civil Case E366 of 2024)  
[2025] KEHC 9289 (KLR) (Commercial and Tax) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9289 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E366 OF 2024  
F GIKONYO, J  
JUNE 19, 2025**

**BETWEEN**

**ADRIAN KENYA LIMITED ..... PLAINTIFF**

**AND**

**CITIBANK NA KENYA ..... DEFENDANT**

**RULING**

**Mandatory injunction**

1. The plaintiff seeks the following two significant orders in its notice of motion dated 8<sup>th</sup> July 2024, expressed to be brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules: -
  - a. A mandatory injunction directing the defendant to immediately and unconditionally release to the plaintiff the plaintiff's contract receivables totalling Kshs. 148,020,021.41 less the sum of Kshs. 138,000,000.00 being the instalment(s) due for the term loan.
  - b. An interim injunction restraining the defendant from exercising its statutory power of sale over L. R. No. 4953/166, Title No. Muguga/Gitaru/2720 and Title No. Muguga/Gitaru/165.
2. The application is supported by the affidavits sworn by the plaintiff's managing director, Bernard W. Njoroge, on 8<sup>th</sup> July 2024 and 2<sup>nd</sup> September 2024 and written submissions dated 1<sup>st</sup> October 2024.
3. The application is opposed by the defendant through replying and supplementary affidavits sworn by its Corporate Bank Head, Onesmus Mwangolo Mbaruku Mwandawiro on 11<sup>th</sup> November 2024. The defendant also filed written submissions dated 10<sup>th</sup> January 2025.



## **Applicant's case**

4. According to the plaintiff, by way of a letter dated 4<sup>th</sup> April 2022, the defendant offered it a term loan for the principal sum of USD 4,700,000. The parties agreed that proceeds ('Contract Receivables') due to the plaintiff from its contracts with Safaricom PLC and Atlas Towers Kenya Ltd, would be channelled through its bank account with the defendant. The plaintiff was required to pay the defendant USD 138,000 every month for the life of the facility.
5. The plaintiff deposed that it fully met its contractual obligations with the bank and ensured that it paid its monthly instalments as and when they fell due. It also deposed that, to date, it is not in any arrears regarding the term loan.
6. The plaintiff averred that despite the clear terms of the repayment of the facilities, by instalments, the defendant unilaterally breached the subsisting agreement and defrayed the whole sum of Kshs. 148,020,021.41, which was credited to its account by Safaricom PLC. That the entire amount was applied by the defendant towards the loan repayment even though the facility itself was secured by various properties and debenture.
7. The plaintiff also averred that instead of deducting the sum of USD 138,000.00 and applying it towards the instalment due for the Term Loan, the defendant unlawfully converted/ withheld the entire sum of Kshs. 148,020,021.41, to its detriment and in utter breach/violation of the parties' arrangement.
8. The plaintiff contended that the parties did not agree that the defendant would convert the entire sum, as that would expose it to various risks including collapse of business ventures and litigation.
9. The plaintiff averred that the defendant's actions have significantly hampered its performance of the contracts with Safaricom PLC and Atlas Towers Kenya Ltd and further deterred its obligation to pay its debts as and when they fall due. The plaintiff has been unable to settle debts owed to suppliers, KRA, and other creditors, as a result of the defendant's actions.
10. The plaintiff highlighted that some of the creditors have resorted to instituting insolvency proceedings against it; that it has been arbitrarily deprived of its property and any profits accruing therefrom and it has debt accruing by day to several suppliers.
11. The plaintiff deposed that as a result, it failed to settle its employees' wages and salaries for May and June 2024 and that it may not settle the salaries and wages for July 2024. The company owes a total of Kshs. 19,225,508.15, which amount will increase if the funds are not released expeditiously. The plaintiff is also unable to remit statutory deductions, including housing levy and P.A.Y.E, due to statutory bodies with the threat of penalties, looming by day.
12. The plaintiff lamented that the defendant has now threatened to auction the properties used to secure the loan after interfering with its business ventures and affecting its cash flow and revenue. It contended that unless part of the said sum is released to it, its business plans will be greatly jeopardized and the company may collapse as employees will exit besides state organs freezing the company for non-remittance of various statutory deductions.
13. The plaintiff submitted that it has met the threshold for the grant of the interim injunction sought. It asserted that it is in the interest of justice that an interim injunction be granted pending the hearing and determination of the suit to protect its right over the property as well as to enable it to continue with its business ventures.
14. The plaintiff relied on: -



1. Giella v Cassman Brown [1973] EA 358
  2. Mrao v First American Bank of Kenya Limited & 2 Others [2003] eKLR
  3. Micah Terer & another v Letshego Kenya Limited [2017] eKLR
  4. Joseph Mbugua Gichaga v Cooperative Bank of Kenya Limited [2005] eKLR
  5. Aikman v Muchoki [1984] KLR 353
  6. Bonface Kivindyo Mutisya v Alfred Kavila Kivindyo & 2 Others [2017] eKLR
  7. Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR
  8. Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR
15. The plaintiff also submitted that the defendant should unconditionally release the contract receivables worth Kshs. 148,020,021.41/-. It relied on:-
1. Garvey v Richards [2011] JMCA 16
  2. Macfoy v United Africa Co. Ltd [1961] 3 All E. R. 1169
  3. National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd another (Civil Appeal No. 95 of 1999) (2001) KLR
  4. *Fina Bank Limited v Spares & Industries Limited (Civil Appeal No. 51 of 2000)* (unreported)
  5. Ritho v Kariithi & Another [1988] KLR 237

## Response

16. The defendant's position is that the plaintiff has failed to disclose relevant and material facts relating to the facilities advanced. It contended that the plaintiff omitted to disclose the existence of various banking facilities extended to it prior to the Working Capital Facility Agreement dated 4<sup>th</sup> April, 2022, including but not limited to term loans, overdrafts, short-term loans, letters of credit, and import financing facilities.
17. According to the defendant, the amount it received from Safaricom PLC was Kshs. 16,281,177.25 which was deposited into the plaintiff's Account Number 0104741004 with the bank. It contended that there is no evidence that Kshs. 148, 020,021. 41 was remitted.
18. The defendant denied the particulars of the breach. It asserted that due to the plaintiff's persistent default, it opted to exercise its statutory power of sale as provided under the law and proceeded to instruct its advocates to issue the requisite three-month Statutory Notice dated 21<sup>st</sup> June, 2024 in respect of the various securities.
19. The defendant asserted that though the plaintiff had hoped to exert undue pressure on it, the Central Bank of Kenya's letter dated 28<sup>th</sup> June, 2024, set the record straight and advised the plaintiff to seek any remedy in the appropriate forum as the matter is contractual.
20. The bank contended that the plaintiff's debts of Kshs. 112,334,358.58, are unrelated to it; that it is not involved in the plaintiff's day-to-day operations, nor is it privy to the plaintiff's contracts with third parties and that therefore, it cannot be held liable for the plaintiff's inability to pay its creditors.
21. The defendant submitted that the plaintiff has approached this court with unclean hands, acted inequitably and is therefore not entitled to the equitable reliefs sought.



22. The defendant relied on:-

1. [David Kamau Gakuru v National Industrial Credit Bank Ltd, Civil Appeal No. 84 of 2001](#)
2. Alice Njoki Mugo v KCB Bank Kenya Limited & another [2020] eKLR
3. Kyangaro v Kenya Commercial Bank Ltd & Another [2004] 1 KLR 126
4. Jopa Villas LLC v Overseas Private Investment and 2 Others (2009) eKLR
5. Al-Jalal Enterprises Limited vs. Gulf African Bank Limited [2014] eKLR
6. Markem Limited [v KCB Bank of Kenya Limited \(Civil Suit E007 of 2022\)](#) [2023] KEHC 23061 (KLR) (5 October 2023) (Ruling)
7. Uhuru Highway Development Limited v Central Bank of Kenya, Exchange Bank Ltd (Involuntary Liquidation) & Kamlesh Mansukhlal Pattni [1996] KECA 102 (KLR)
8. National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd [2002] 2 EA 503
9. Kenya Airports Authority v Paul Njogu Mungai & 2 Others [1997] KECA 261 (KLR)
10. Giella v Cassman Brown and Co. Ltd [supra]
11. Tom Otwoma Omosa & another v Bank of Africa Kenya Limited & another
12. Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR
13. Ronald Ratemo Moturi & another v Credit Bank Limited & another [2021] eKLR
14. Showind Industries v Guardian Bank Limited & Another
15. John Nduati Kariuki t/a Johester Merchants v National Bank of Kenya Ltd (2006) eKLR
16. Ibrahim Seikei T/A Masco Enterprises v Delphis Bank 2004 eKLR

### **Analysis and Determination**

23. The issues for determination are: -

1. Whether the plaintiff has met the threshold for an injunction to restrain the defendant from exercising its statutory power of sale.
  2. Whether the defendant should unconditionally release contract receivables of Kshs. 148,020,021 to the plaintiff. This is a claim for mandatory injunction.
24. The threshold for the grant of an interim injunction pending the hearing and determination of a suit was established in *Giella v Cassman Brown & Co Ltd*. Whilst keeping the broader constitutional principles of justice in view, the applicant is required to demonstrate that it has a prima facie case with probability of success, irreparable injury that cannot be compensated by damages and that the balance of convenience tilts in their favour.
25. The manner the three conditions are to be applied is sequentially. *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86
26. A prima facie case is one where, on material presented, a court will conclude that the applicants' rights have been infringed. It is more than an arguable case. *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [supra]



27. The plaintiff argued that the defendant should be restrained from exercising its statutory power of sale given that its loan was a performing loan and there are all intentions for regularizing the remaining loan if only the defendant adhered to the terms of the Facility loan agreement dated 26<sup>th</sup> March 2021.
28. The plaintiff submitted that the defendant's action of defraying the amounts without its consent amounted to a dire breach of the agreement. The defendant debited Kshs. 148,020,021.41 from Safaricom PLC, instead of deducting USD 138,000.00 and applying it towards the instalment due for the term loan. That this led to missed revenue opportunities, eroded customer trust and limited growth potential.
29. The plaintiff contended that if the defendant is allowed to exercise their statutory power of sale, it stands to lose on crucial ownership of Title Numbers L. R. No. 4953/166, Title No. Muguga/Gitaru/2720 and Muguga/Gitaru/165 which are strategic for its current and future operations.
30. On its part, the defendant submitted that the plaintiff is not deserving of the equitable reliefs sought as it has not approached this court with clean hands. It highlighted that the plaintiff stated that it has fully complied with its contractual obligations by paying monthly instalments and interest when due yet in its further affidavit admitted to defaulting on the term loan for the months of June 2024, July 2024, and August 2024.
31. The defendant faulted the plaintiff for initially attributing its non-compliance to the defraying of funds from Safaricom by the bank. The defendant also faulted the plaintiff for claiming in the same breath that the non-compliance was due to changes in Safaricom PLC's payment policy and the vitiation of its contract with Atlas Towers Kenya which happened in 2021.
32. The defendant pointed to evidence that the plaintiff fell into financial distress as early as May 2022. It contended that there is no nexus between its actions and the plaintiff's accumulation of debt to its creditors.
33. The defendant submitted that the plaintiff has admitted to defaulting in making payments for the months of June, July, and August 2024, causing the bank to issue a demand notice dated 28<sup>th</sup> May 2024. It thus contended that a chargee cannot be restrained from exercising its rights under a legal charge where there are sums due and owing are expressly stipulated in the instrument. It also contended that it is entitled to realize the security by selling the charged properties to recover the outstanding amounts. That it has issued the requisite notices to rectify default under Section 90 of the Land Act.
34. The court is cognizant that in determining whether a prima facie case has been established, it must not hold a mini-trial. In addition, the court does not examine the merits of the case so closely. Nguruman Ltd v Jan Bonde Nielsen & 2 Others, [supra]
35. Having looked at the material presented, I am not satisfied that the plaintiff has established a prima facie case with a probability of success. Therefore, there is no need to consider the other two conditions of irreparable harm or balance of convenience as per the Nguruman case.

### **Mandatory injunction**

36. I now move to consider whether the defendant should unconditionally release contract receivables of Kshs. 148,020,021 to the plaintiff.
37. The plaintiff seeks a mandatory injunction directing the defendant to immediately and unconditionally release to it contract receivables totalling Kshs. 148,020,021.41 less the sum of Kshs. 138,000,000.00 being the instalment(s) due for the term loan.



38. However, the defendant contended that it did not receive the Kshs. 148,020,021.41 from Safaricom PLC and that the actual amount received from Safaricom PLC was Kshs. 16,281,177.25 which was deposited into the plaintiff's account.
39. Halsbury's Laws of England volume 24 paragraph 948 sets out the threshold for the grant of a mandatory injunction as follows:-
- “A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a match on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high sense of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.” [underlining mine]
40. In *Kenya Airports Authority v Paul Njogu Mungai & 2 Others* [supra] the Court of Appeal pointed out that:-
- “... the principles governing grant of mandatory as well as prohibitory (restrictive) orders pending hearing and determination of a suit in the High Court are the self-same ones enunciated in the celebrated case of *Giella v. Cassman Brown & Co. Ltd.* [1973] E.A. 358 save that a temporary mandatory injunction can only be granted in exceptional and in the clearest of cases.”
41. In *Shariff Abdi Hassan v Nadhif Jama Adan* (Civil Appeal 121 of 2005) [2006] eKLR, the Court of Appeal elaborated that:-
- “The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.
42. The court has found that the plaintiff has not established a prima facie case with a probability of success. The amounts in issue have also been disputed and there is no reconciliation that has been provided to the court.
43. The mandatory injunction has been sought on an interlocutory application. The court has found that the plaintiff has not established a prima facie case with a probability of success. The amounts in issue have also been disputed and there is no reconciliation that has been provided to the court. There are no special circumstances. This is not also a clear case as to compel a thought that; the matter ought to be decided at once or the injunction was directed at a simple and summary act which could easily be remedied or the defendant had attempted to steal a match on the plaintiff. Nothing that excites such assurance that granting a mandatory injunction would be the right thing.
44. In the circumstances of this case, I find that the plaintiff has not met the threshold for the grant of a mandatory injunction at interlocutory stage.



## **Disposal**

45. In the upshot, the plaintiff's application dated 8<sup>th</sup> July 2024 is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 19<sup>TH</sup> DAY OF JUNE, 2025**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

1. Ms. Mathangani/Rejeru for Respondent
2. Ms. Mutuku for Mosota for Plaintiff
3. CA Kinyua

