



REPUBLIC OF KENYA



KENYA LAW
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**Kimani & 2 others v Equity Bank(K) Limited & another (Civil Case E566 of 2024)
[2025] KEHC 8312 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E566 OF 2024
FG MUGAMBI, J
JUNE 13, 2025**

BETWEEN

**NANCY NJERI KIMANI 1ST PLAINTIFF
MOREEN WAKESHO KIMANI 2ND PLAINTIFF
BRIAN MUNA KIMANI 3RD PLAINTIFF**

AND

**EQUITY BANK(K) LIMITED 1ST DEFENDANT
BRITAM GENERAL INSURANCE LTD 2ND DEFENDANT**

RULING

1. Before the Court is a Notice of Motion application dated 20th September 2024 brought under the provisions of Order 40 Rule 1 of the Civil Procedure Rules, as well as Articles 40, 46, and 59 of *the Constitution* of Kenya, 2010.
2. The applicants seek an interlocutory injunction to restrain the 1st defendant Bank from exercising its statutory power of sale over properties charged to secure a loan advanced to the late Paul Kimani Muna (the borrower), pursuant to a letter of offer dated 10th December 2014.
3. The application is premised on the grounds set out on the face of the motion and is supported by the affidavit of Nancy Njeri Kimani. The applicants confirm that the borrower obtained a facility of Kshs. 50,000,000/= from the Bank, secured by charges over the following properties:
 - i. Murang'a/Minicipality Block 2/171 (jointly owned with the 1st applicant, a spouse to the deceased),



- ii. Murang'a/Minicipality Block 3/96 (jointly owned with the 3rd applicant, a son to the deceased), and
 - iii. LOC.11/Maragi/2022 (registered in the deceased's name).
4. The applicants aver that a mortgage protection insurance policy (*Policy No. MPPP003/521749/18*) was obtained from the 2nd defendant, Britam, with a cover amounting to Kshs. 46,843,856/=, for which a premium of Kshs. 281,064/= was duly paid. It is their understanding that this insurance cover was intended to settle the outstanding loan balance in the event of the borrower's demise.
 5. Following the death of the borrower on 26th October 2021, and despite notification of the same, the Bank proceeded to issue a statutory notice dated 9th July 2024, demanding full repayment within 90 days and threatening to auction the charged properties. It is further alleged that the Bank has engaged agents to collect rent and interfere with the applicants' quiet possession of the properties. The applicants contend that the Bank ought to have lodged a claim against Britam under the policy or, in the alternative, is liable for negligence in failing to ensure the existence of a valid credit life cover at the time of disbursement. They submit that unless injunctive relief is granted, they stand to suffer irreparable loss.
 6. The application is opposed through a replying affidavit sworn by Stanley Gatonga, the Credit Manager at Equity Bank, Kangema Branch. He confirms that the deceased was advanced the loan and that the same was secured by the three properties, some of which are jointly owned with the applicants who also executed guarantees in support.
 7. The Bank asserts that the deceased only held a mortgage protection cover, not a credit life insurance policy, and that the former was effective for one year only from 30th July 2018 to 29th July 2019. It is contended that this cover lapsed more than two years before the borrower's death, and no premiums were paid thereafter. Accordingly, Britam cannot be compelled to settle the loan, and the Bank is entitled to realize the securities. The Bank argues that the applicants have failed to establish the legal threshold for the grant of interlocutory injunctive relief.

Analysis and Determination

8. I have carefully considered the application, the response thereto and the respective submissions filed. the main issue for determination is whether the applicant has met the threshold for grant of the interlocutory relief.
9. In considering whether to grant injunctive relief, the Court is guided by the well-established principles set out in *Giella V Cassman Brown*, [1973] EA 358. These require the applicant to demonstrate a prima facie case with a probability of success, that they would suffer irreparable harm not compensable by damages if the injunction is denied, and where doubt exists, the matter should be decided on the balance of convenience.
10. The meaning of a prima facie case was clarified in *Mrao Ltd V First American Bank of Kenya Ltd*, [2003] KLR 125, where the Court held that such a case must show an apparent infringement of a right, not just an arguable claim. It must demonstrate a real prospect of success at trial, thus setting a higher threshold than mere arguability.
11. Upon reviewing the evidence on record, I note that the letter of offer made it a pre-condition to the disbursement that the borrower, was to take out a mortgage protection insurance policy with the Bank's interest noted on the policy. Indeed, the deceased did take out the cover. The endorsement note shows that the cover was in the name of Nancy Njeri Kimani and Paul Kimani Muna. The cover was



provided by Britam for a sum of Kshs. 46,843,856/= and a premium of Kshs. 281,064/= was paid. The cover was effective from 26th July 2018.

12. The evidence on record further shows that the cover for policy No. MPP/003/521749/18 extended up to 25th July 2019. I therefore agree with the Bank that the mortgage protection risk cover was only for one year and had therefore already expired by 26th October 2021, when the borrower passed on.
13. The Bank has asserted that the insurance policy in question was not a credit life cover over the deceased's life. Although the said policy has not been availed before this Court, it is central to the applicants' claim. The key issue for determination will be whether the policy was intended to secure the mortgage by covering the outstanding amount in the event of the borrower's death, and, crucially, whether the Bank acted negligently by allowing the facility to continue despite the borrower allegedly falling out of compliance with the insurance requirements.
14. These are weighty and contested questions which can only be adequately resolved at the trial through the production and scrutiny of the relevant documentary and oral evidence. Accordingly, I find that the applicants have established a prima facie case with a probability of success and have thus satisfied the first limb of the test in *Giella V Cassman Brown*, [1973] EA 358.
15. On the second limb, I am persuaded that the loss and disruption that would result from the sale of the properties would be grave and irreparable, and would not be adequately compensated by an award of damages, especially in view of the contested nature of the mortgage protection cover and the Bank's knowledge of its status. The second limb is therefore satisfied.
16. I am of the view that the balance of convenience tilts in favour of preserving the subject matter of the suit pending a full determination of the issues.

Disposition

17. Accordingly, the application dated 20th September 2024 is allowed. The costs of the application shall await the outcome of the suit.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 13TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

