



**Sky & Sea Cargo Track Limited & another v Equity Bank (K) Limited (Commercial Case E529 of 2024) [2025] KEHC 8803 (KLR) (Commercial and Tax) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8803 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E529 OF 2024  
JWW MONG'ARE, J  
JUNE 13, 2025**

**BETWEEN**

**SKY & SEA CARGO TRACK LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**JOSEPHINE NAFULA MAKHANU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EQUITY BANK (K) LIMITED ..... DEFENDANT**

**RULING**

1. It is common ground that by a Facility Letter dated 24<sup>th</sup> August 2020, the Defendant (“the Bank”) offered the 1<sup>st</sup> Plaintiff a loan facility of Kshs.18,000,000.00 repayable within 120 months which facility was secured by inter alia charges over the properties Title No. Nairobi/Block 62/255 Ayani Estate, Kibera, Nairobi County; Title No. Nairobi/Block 62/418 Ayani Estate, Kibera, Nairobi County and Apartment No. C7 on L.R. No. 5/155 (I.R. 151355), Nairobi County (“the suit properties”). The 1<sup>st</sup> Plaintiff sought another loan facility of Kshs.28,300,000.00 which was granted by the Bank on 29<sup>th</sup> September 2022 through a Facility Letter of the same date and which facility was secured by further charges over the suit properties.
2. By a plaint dated 5<sup>th</sup> September 2024 and an application of the same date, the Plaintiffs have approached the court seeking to stop the Bank from selling the suit properties and revising the Facility Letters on the grounds that they have repaid the facilities and that there no outstanding loans or arrears, that they have complied with all the terms, conditions and regulations of the Facility Letters and that there existed no fault at all to warrant the Bank’s issuance of the 45-days’ Redemption Notice and Notice of sale of the suit properties. The Plaintiffs further fault the Bank for not issuing the statutory notices under section 90(1) and (2) of the [Land Act](#) (Chapter 280 of the Laws of Kenya).



3. The Bank has responded to the application through the replying affidavit of its Assistant Manager, Legal Services, Samuel Wamaithasworn on 27<sup>th</sup> March 2025. It depones that the Plaintiffs have been in persistent default of their obligations to repay the loan facilities and that several demands by the Bank elicited no response. That the requisite statutory notice dated 12<sup>th</sup> January 2024 and the Notice of Intention to Sell dated 8<sup>th</sup> June 2024 was served upon the Plaintiffs via registered post but that they were unresponsive prompting the Bank to begin the process of selling the suit properties.
4. That the Bank conducted a valuation of the suit properties and they instructed auctioneers to conduct an auction over the suit properties in a bid to realize the outstanding sum which now stands at Kshs.50,583,168.32. As such, the Bank avers that the Plaintiffs have not satisfied the conditions-precedent for the grant of an injunction.
5. I have gone through the application, the Bank's response and the Plaintiffs' submissions and the main issue for the court's determination is whether the Plaintiffs are entitled to the injunction orders that they seek. As deponed by the Bank, the conditions required to be satisfied by the Plaintiffs for an injunction to be granted are that they are required to demonstrate a prima facie case with a probability of success, that they 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 (see *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 3580)].
6. Let me add that these conditions are to be applied as separate, distinct and logical hurdles which the Plaintiffs are expected to surmount sequentially which means that if the Plaintiffs 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))
7. The Plaintiffs submits by urging the court to determine whether they have repaid the loans that were issued to them as per the Facility Letters. In making this determination I am aware that the court is not required to conduct a mini trial but must nevertheless determine whether there is a prima facie case at least based on the material before it (See *Nguruman Limited*(supra)).
8. The Plaintiffs submit that as per the Bank's statement and the Plaintiffs' own analysis of the repayment of the loan, the outstanding amount as at 8<sup>th</sup> August 2024 in respect of the Facility Letter dated 24<sup>th</sup> August 2020 is Kshs.65,416.38. Further, that they have overpaid the loan in respect of the Facility Letter dated 29<sup>th</sup> September 2022 by Kshs.340,899.85 which can easily clear the outstanding sum in respect of the other Facility Letter.
9. As stated, the Bank has asserted that the Plaintiffs remain indebted to the tune of Kshs.50,583,168.32 and it has annexed Statements for the subject loan Accounts as of 6<sup>th</sup> February 2025. Whereas the Plaintiffs have their own analysis and tabulation of how they have repaid the facilities and that they do not have any arrears with the Bank, it should not be lost that section 176 of the [Evidence Act](#) creates a presumption in favour of the Bank's entries in its statements of accounts as follows:
  176. A copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.
10. It therefore follows that on a prima facie basis, the entries in the Bank's Statements of Accounts that have been annexed indicate that the Plaintiffs are still in arrears as the said statements indicate debit balances. As the Plaintiffs' loan accounts with the Bank are in arrears, it follows that the Bank was entitled to exercise its statutory power of sale of the suit properties by first issuing the requisite statutory notices.



11. The Plaintiffs have stated that these notices were neither issued nor served upon them. Going through the Bank's deposition, I disagree as I note that the Notices were sent to the addresses P.O. Box 6691-00100 NAIROBI, which was similar to those indicated in the Facility Letters and the 1<sup>st</sup> Plaintiff's resolution to take up the facility dated 23<sup>rd</sup> August 2022. The Bank has also annexed a list of the letters sent out by the Postal Corporation of Kenya which is prima facie proof that the Notices were served upon the Plaintiffs as the addresses admittedly belong to them and the postage list confirms that they were received or deemed to have been received by them (see Nyangilo Ochieng & another v Fanuel B. Ochieng & 2 others [1996] KECA 205 (KLR)). Thus, the Plaintiffs cannot state that they never received the Notices.
12. In the foregoing, it is my finding that the Plaintiffs are indebted to the Bank, the Bank rightly issued and served upon the Plaintiffs the requisite statutory notices thus crystallizing their statutory power of sale over the suit properties. The Plaintiffs have failed to make out a prima facie case for an injunction and in line with the dicta in Nguruman(supra) their quest ends at this point.
13. The upshot is that the Plaintiffs' application dated 5<sup>th</sup> September 2024 has no merit and the same is dismissed with costs. The interim orders in place are hereby discharged forthwith. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF JUNE 2025**

.....  
**J.W.W. MONGARE**

**JUDGE**

In The Presence Of:-

Mr. Osoro for the Plaintiffs/ Applicants

Mr. Aloo for the Respondent.

Amos- Court Assistant

