



**Kimani Operations Limited v Absa Bank Limited (Civil Case E557 of 2024)
[2025] KEHC 10983 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E557 OF 2024
PM MULWA, J
JULY 24, 2025**

BETWEEN

KIMANI OPERATIONS LIMITED APPLICANT

AND

ABSA BANK LIMITED RESPONDENT

RULING

Introduction

1. The Plaintiff is the registered proprietor of the properties known as Nairobi/Block 32/40 Golf Course Estate Phase 1, LR no 36/III/152, LR no 36/III/153, LR no 36/II/350 and Ndumberi/Ndumberi/2067 (hereinafter "the suit properties"). On diverse dates between 2021 and 2022, the Plaintiff was advanced various banking facilities by the Defendant. These facilities were secured by a first charge, a second charge, and a further charge over the suit properties.
2. Upon default by the Plaintiff in servicing the loan accounts, the Defendant bank moved to exercise its statutory power of sale. Statutory notices were subsequently issued, prompting the Plaintiff to move this Court seeking injunctive relief.

The Application

3. The Plaintiff has approached this Court *vide* a Notice of Motion dated 16th September 2024, brought under Sections 3 and 3A of the *Civil Procedure Act* and Order 40 of the *Civil Procedure Rules*, 2010. The Plaintiff seeks an interlocutory injunction restraining the Defendant, its agents or servants, from advertising for sale, offering for sale, disposing of, or otherwise alienating the suit properties by private treaty or public auction.



4. The application is premised on the grounds set out on the face of the Motion and is supported by the affidavit of Michael Kamau Kimani, the Managing Director of the Plaintiff, sworn on even date.

Plaintiff's Case

5. The Plaintiff avers that the loan was advanced for two purposes: to partly-settle an existing facility with Diamond Trust Bank (DTB) and to complete a mixed-use development on LR no Ndumberi/ Ndumberi/2067. It is the Plaintiff's case that it had faithfully serviced the loan until the Defendant unilaterally and unlawfully increased the interest rate from 15.25% to 20.25%, thereby escalating the monthly repayment obligations.
6. The Plaintiff further contends that the Defendant unlawfully withdrew the subsisting overdraft facility, originally taken over from DTB, which was being used to supplement monthly repayments. Consequently, the account fell into arrears, and the Defendant issued a statutory notice dated 19th April 2024 demanding full payment of Kshs. 244,610,984/=.
7. Attempts to renegotiate the repayment plan were unsuccessful. Thereafter, a statutory notice of sale was issued on 1st August 2024. The Plaintiff now fears that unless restrained, the Defendant will unlawfully dispose of the suit properties, occasioning it irreparable harm.

Defendant's Response

8. The application is opposed through the replying affidavit of Samuel Njuguna, the Legal Officer of the Defendant, sworn on 11th November 2024. The Defendant concedes that the Plaintiff is indebted to the Bank and contends that it is lawfully exercising its statutory power of sale.
9. It is the Defendant's position that the Plaintiff was at all times aware of the consequences of default. The Defendant argues that the Plaintiff has not demonstrated a *prima facie* case with a probability of success, nor shown that it would suffer irreparable injury incapable of being compensated by damages. It further asserts that the Plaintiff has approached the Court with unclean hands and that the application is a ploy to frustrate the Defendant's lawful right of sale.

Analysis and determination

10. In order to succeed in an application for an interlocutory injunction, the plaintiffs must satisfy the conditions established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. First, they must show a *prima facie* case with a probability of success. Second, they must establish that they will suffer irreparable injury, which would not adequately be compensated by an award of damages. Third, if the court is in doubt, it will decide an application on the balance of convenience. In *Nguruman Limited v Jane Bonde Nielsen & 2 others* NRB CA Civil Appeal No. 77 of 2012 [2014] eKLR, the Court of Appeal clarified that the three conditions are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.
11. A *prima facie* case is defined in the case of *Mrao Ltd v First American Bank of Kenya Limited & 2 others* (2003) eKLR as:

“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.”



12. Applying the foregoing to the present application, it is not in dispute that the Plaintiff is the registered owner of the charged properties and that the facilities in question were indeed advanced. It is equally not disputed that the Plaintiff has fallen into arrears. The Plaintiff does not deny its indebtedness per se, but rather blames the default on the alleged unlawful increase in interest rates and the withdrawal of an overdraft facility.
13. I have considered the facility letters and the charge instruments annexed to the affidavits. It is evident that the Bank retained a contractual discretion to vary interest rates, subject to notice. The Plaintiff has not presented cogent evidence demonstrating that the variation of interest was irregular, unlawful, or contrary to the facility terms.
14. The Defendant maintains that it issued the requisite statutory notices in accordance with Sections 90 and 96 of the Land Act, 2012. Under Section 90(1), a chargee is permitted to issue a notice of default of not less than 90 days. Upon failure to remedy the default, Section 96(2) authorizes the chargee to proceed with the sale of the charged property. The Plaintiff has not challenged the service or content of these notices with specificity. Mere apprehension of sale, without proof of procedural irregularity or illegality, is not sufficient to warrant the grant of an injunction.
15. Further, the Plaintiff has admitted being in default. In Andrew Muriuki Wanjobi v Equity Building Society & 2 Others [2006] eKLR, the court held that:

“...by offering the suit property as security, the chargor was equating it to a commodity which the chargee may dispose of, so as to recover his loan together with interest thereon. Therefore, if the chargee were to sell off the suit property, the chargor’s loss could be calculable, on the basis of the real market value of the said property.”
16. I observe that the Plaintiff freely and voluntarily charged the suit property and was clearly aware that in the event of default in servicing the debt, the properties would be liable to be sold. The Plaintiff in this case is bound by the agreement it entered into with the Defendant on the terms of the loan repayment and no illegality has been demonstrated nor breach of any rights of the plaintiff by the defendant.
17. In view of the above, the Court finds that the Plaintiff has not established a *prima facie* case with a probability of success. Similarly, no irreparable injury has been demonstrated. Once a property is offered as security, it becomes a commodity for sale. Any loss that may result from its sale is ordinarily quantifiable in monetary terms. This principle was echoed in Samwel Kipkemei Ruto v Kenya Commercial Bank Limited & Another [2021] eKLR.
18. As regards the balance of convenience, it tilts in favour of the Defendant who is seeking to realize its security in accordance with law, after the Plaintiff’s admitted default. To restrain the Defendant from exercising its statutory power of sale in the circumstances would amount to unjustly shielding a defaulting borrower from the consequences of default.

Disposition

19. In the result, and having carefully considered the application, the supporting and replying affidavits, and the submissions of counsel, this Court finds that the Plaintiff has not met the threshold for the grant of an interlocutory injunction.
 20. Accordingly, the Notice of Motion dated 16th September 2024 is hereby dismissed with costs to the Defendant.
- It is so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Njuguna for Plaintiff/Applicant

Mr. Kimiti for Defendant/Respondent

Court Assistant: Carlos

