



Ramana Group Limited v Sidian Bank Limited & another (Commercial Suit E009 of 2024) [2025] KEHC 10367 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL SUIT E009 OF 2024
H NAMISI, J
JULY 18, 2025**

BETWEEN

RAMANA GROUP LIMITED PLAINTIFF

AND

SIDIAN BANK LIMITED 1ST DEFENDANT

**STEVEN KARANJA KANG'ETHE T/A DALALI TRADERS
AUCTIONEERS 2ND DEFENDANT**

RULING

1. The Applicant has filed Notice of Motion dated 16 September 2024 seeking the following orders:
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That after hearing of this application *inter-partes*, this Honourable Court be pleased to grant an interlocutory injunction restraining the Defendants/Respondents or any other persons/s, whether by themselves and/or their servants, agents, assignees or other persons under them or otherwise howsoever from entering, subdividing, selling, transferring, assigning, leasing, subletting, charging or otherwise trespassing upon and/or alienating and/or interfering with the Applicant's ownership, use and quiet enjoyment of Property Land Reference No. 10090/824 (Original No. 10090/81/15) pending hearing and determination of this suit;
 - v. That in the event that any auction is held before the hearing and determination of this application the Defendant/Respondent by itself, auctioneers, agents and servants be restrained from transferring the Suit Premises to any purchaser pending the hearing and determination of this application;



- vi. That the costs of this application be provided for
2. The Application is supported by an Affidavit sworn by Mercy Wangare Chege, a Director of the Plaintiff. The Applicant's case, as gleaned from the Application and Supporting Affidavit, is that it obtained a loan facility for Kshs 32,246,476/= from the 1st Defendant/Respondent, which was secured by a legal charge over LR No. 10090/824. Additionally, the Applicant gave motor vehicles registration Numbers KDG 112B and KCK 783E as collateral.
 3. The Applicant avers that in April 2024, it approached the 1st Defendant/Respondent for loan restructuring, which proposal the 1st Defendant/Respondent agreed to. As a condition, the 1st Defendant/Respondent required the Applicant to provide another security, to which the Applicant obliged and deposited the original Certificate of Title for LR No. 10090/823 to be held on simple deposit.
 4. The Applicant alleges that the 1st Defendant/Respondent intends to exercise its statutory power of sale unlawfully, since the process is marred with irregularities. Firstly, the Applicant contended that it was never served with the mandatory statutory notices as required by Section 90(1) of the Land Act, 2012.
 5. Secondly, the Applicant claimed that the Defendants/Respondents intend to sell the suit property without a current professional valuation report, contrary to the provisions of section 97(2) of the Land Act and Rule 11(b)(x) of the Auctioneers Rules, 1997. According to the Applicant, the Report received on the morning of 16 September 2024 indicates a market value of Kshs 24 million and forced sale value of Kshs 9 million.
 6. Thirdly, the Applicant asserts that there were fruitful negotiations to restructure the loan and that the 1st Defendant/Respondent has not properly accounted for the payments made, leading to a dispute over the actual amount owed. The Applicant states that it will suffer irreparable harm if the injunction is not granted, as the suit property is of significant value and sentimental attachment.
 7. In response, the 1st Defendant/Respondent filed Replying and Supplementary Affidavits, contending that the Applicant has admitted its indebtedness to the 1st Defendant/Respondent, which admission is drawn from the Supporting Affidavit. The 1st Defendant/Respondent asserts that it complied with all the statutory requirements in the exercise of its statutory power of sale. All statutory notices, including the 90-day notice and the 40-day notice to sell, as well as the 45-days redemption notice, were duly served upon the Applicant by registered post, as provided in the Charge document. The 1st Defendant/Respondent annexed copies of the notices as well as the postage receipts.
 8. Regarding the valuation, it is the 1st Defendant/Respondent's case that the Professional valuation report dated 16 August 2024 was obtained, which confirmed a forced sale value of Kshs 9 million, correlating with the Applicant's own valuation. The 1st Defendant/Respondent denies the allegations of undervaluation or intention to sell the suit property below the market value.
 9. With respect to the disputed accounts, it is the 1st Defendant/Respondent's argument that a mere dispute does not vitiate the Bank's right to realize the security, especially where the Applicant has admitted the default in payment. They contend that the property, having been offered as security, has become a commodity for sale, and any loss can be adequately compensated by damages.
 10. The Application was canvassed by way of written submissions.



Analysis & Determination

11. Having keenly read the Application, response thereto and submissions, the central issue for determination herein is whether the Applicant has satisfied the conditions for the grant of an interlocutory injunction, namely:
 - i. Whether the Applicant has established a *prima facie case* with a probability of success;
 - ii. Whether the Applicant stands to suffer irreparable harm that cannot be adequately compensated by an award of damages;
 - iii. Whether the balance of convenience tilts in favor of granting the injunction.
12. It is important to emphasise that these conditions are not to be applied in isolation, but sequentially. As articulated by the Court of Appeal in the case of *Nguruman Ltd -vs- Jan Bonde Nielsen & 2 Others*; CA Civil Appeal No. 77 of 2012 [2014] eKLR, if the first condition is not met, the second and third conditions need not be considered.
13. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd* [2003] KLR 125 defined a *prima facie case* to mean:

“... In civil cases, a *prima facie case* is a case in 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 to call for an explanation or rebuttal from the latter. A *prima facie case* is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case...”
14. In *Platinum Credit Limited v Ahmed & another* (Civil Appeal E142 of 2021) [2023] KEHC 2302 (KLR), the Court stated thus:

“It has been held that in considering whether or not a *prima facie case* has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a *prima facie case*.”
15. In the instant application, the Applicant has raised several grounds in support thereof. The Applicant alleges lack of service of the mandatory statutory notices as required by the *Land Act*. In response, the 1st Defendant/Respondent has produced a comprehensive array of notices, along with certificates of postage.
16. The Defendants/Respondents relied on the case of *Bharmal Kanji Shah & Another -vs- Shah Devar Deuji*, in which the Court held that an account dispute is not a ground for injunction. This argument notwithstanding, it is evident that there is a dispute as to the amount claimed.
17. As stated in the *Platinum Credit case* (*supra*), at this juncture, the court does not hold a mini trial to examine the merits of the case. All that this Court has to satisfy itself is that the Applicant has raised issues that ought to be reserved for full hearing. I am satisfied that the Applicant has done so.
18. Having found that a *prima facie case* has been made out, I now address the issue of irreparable harm. The Applicant is required to demonstrate that it would suffer irreparable harm that cannot



be compensated by damages. In this respect, the Applicant claims sentimental attachment to the suit property. However, as submitted by the Defendants/Respondents, once a property is offered as security for a loan, it becomes a commodity for sale in the event of default. In the case of *Florence Maina & Another -vs- Equity Bank Ltd & 2 Others* [2023] KEHC 23538 (KLR), the Court stated thus:

“I reject the Plaintiff’s repeated argument that the suit property is sentimental to them and that losing it cannot be compensated by an award of damages because of its unique and peculiar nature. It appears the plaintiffs are still in denial about what the court told them in the suit about the suit property; that once they offered the suit property as security for the loan granted to the Borrower, it became a commodity for sale and damages are foreseeable. There is no property, however sentimental or peculiar, that is incapable of being valued and damages awarded for it.

19. *Halsbury’s Laws of England*, Third Edition, volume 21, page 352, defines irreparable harm as follows: -

“...By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter in question...”

20. Based on the above, I am not convinced that the Applicant has demonstrated that the harm suffered would be irreparable and cannot be compensated by an award of damages. Any financial loss incurred from the sale of a charged property can generally be quantified and compensated through damages, provided the Chargee is able to meet such an award. There is no indication that the 1st Defendant/Respondent, a regulated financial institution, would be unable to compensate the Applicant in damages should the sale proceed and be later found unlawful.

21. On the third ground, if the Court is in doubt as to the first two, it shall then determine in whose favour does the convenience tilt. The subject property is said to be security for a loan advanced to the Applicant. From the Application and Affidavits, it is clear that the Applicant is in arrears, although the exact amount owed is yet to be ascertained. There is admission about ongoing negotiations and restructuring of the loan, though at this juncture, no evidence has been presented to show the steps taken by the Applicant to repay the monies owed. The Applicant, therefore, cannot blame the Bank for exercising its statutory power of sale. The balance of convenience tilts in favour of the 1st Defendant/Respondent.

22. The Plaintiff’s Application dated 16 September 2024 is hereby dismissed, with costs to the Defendants/Respondents.

DATED AND DELIVERED AT THIKA THIS 18TH DAY OF JULY 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Plaintiff/Applicant: N/A

Defendants/Respondent: Philip Ndegwa Bundi



Court Assistant: Libertine Achieng

