



**Vundi v Standard Chartered Bank Kenya Limited & another (Civil Suit E590 of 2023)  
[2024] KEHC 7345 (KLR) (Commercial and Tax) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7345 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E590 OF 2023  
FG MUGAMBI, J  
JUNE 14, 2024**

**BETWEEN**

**EVELYN NZAMBI VUNDI ..... PLAINTIFF**

**AND**

**STANDARD CHARTERED BANK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**OASIS GREEN GROWERS C LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The plaintiff filed this suit against the defendants vide a plaint dated 30<sup>th</sup> November 2023. The genesis of the suit is a charge created by the plaintiff over her property, Land Reference No. 7413/23 (herein the subject property) as security in favor of the 2<sup>nd</sup> defendant for a facility that was extended by the 1<sup>st</sup> defendant.
2. By the suit the plaintiff seeks to stop an intended auction of the subject property and an order directing the 1<sup>st</sup> defendant to pursue the 2<sup>nd</sup> defendant as principal debtor.
3. In addition to the plaint the plaintiff filed an application dated 30<sup>th</sup> November 2023 seeking temporary injunctive relief against the defendants from dealing in any way with the subject property pending the hearing and determination of the suit.
4. The application is supported by the affidavit sworn by the plaintiff EVELYN NZAMBI VUNDI on even date. The plaintiff confirms having agreed to guarantee a loan facility in favor of the 2<sup>nd</sup> defendant, by charging the subject property. The plaintiff alleges that at no point was she notified of any default by the 2<sup>nd</sup> defendant, until she received a 40-day Notification of Exercise of Statutory Power of Sale, on 9<sup>th</sup> October 2023 from the 1<sup>st</sup> defendant.



5. The plaintiff denies having been served with a 90 days statutory notice as required under section 90 of the [Land Act](#) and in breach of the charge document.
6. The plaintiff further confirms that the 2<sup>nd</sup> defendant is able and willing to clear the outstanding loan sum, and the plaintiff therefore prays that the 1<sup>st</sup> defendant pursues the same as opposed to selling the subject property.
7. The application is opposed by a replying affidavit sworn by Boniface Machokia manager in the Collection and Recoveries Unit of the 1<sup>st</sup> defendant on 21<sup>st</sup> December 2023. The 1<sup>st</sup> defendant confirms that by way of security for the facility advanced to the 2<sup>nd</sup> defendant the plaintiff created and registered a Legal Charge over the suit property dated 31<sup>st</sup> January 2018 and in addition executed a Personal Guarantee dated 10<sup>th</sup> November 2017 and a Deed of Indemnity dated 26<sup>th</sup> January 2018.
8. The 1<sup>st</sup> defendant further confirms that demand notices, correspondences and reminders were sent to both the plaintiff and the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant argues that the plaintiff has not made out a case for grant of injunctive relief as prayed.

### **Analysis and determination**

9. I have carefully considered the pleadings, written submissions and the authorities filed by the parties. The issue for determination is whether the applicant has made out a case for the injunctive relief sought. The conditions that guide the Court in determining whether to grant an injunction are provided for under Order 40 Rule 1 of the Civil Procedure Rules 2010. The jurisprudence over the subject is also well crystalized and has been expounded in numerous decisions including the celebrated case of *Giella V Cassman Brown & Co Ltd*, (1973) E.A 385.
10. This Court is called upon to ascertain whether the plaintiff has established that she has a prima facie case following the threshold laid out in [Mrao Ltd V First American Bank of Kenya Ltd & 2 Others](#), [2003] KLR 125. The Court defined a prima facie case as:

“...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 as 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. The evidence must show an infringement of a right, and the probability of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.”
11. In determining whether a prima facie case has been established I am cognizant of the limitations of enquiry that are permitted of this court at this point in time. The Court of Appeal in [Nguruman Ltd V Jan Bonde Nielsen & 2 Others](#), [2014] eKLR observed 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.”
12. From a cursory perusal of the record, I note that the plaintiff does not deny that the 1<sup>st</sup> defendant advanced a loan facility to the 2<sup>nd</sup> defendant with the suit property serving as security. The plaintiff also acknowledges that there is a default on the facility save that the 2<sup>nd</sup> defendant should be liable to pay the same.



13. The plaintiff undertook vide Clause 2(a)(ii) of the Personal Guarantee dated 10<sup>th</sup> November 2017 that:
- “Whenever the borrower does not pay any amount when due under or in connection with any Finance Document it must immediately and on demand by the bank pay that amount as if it was the principal obligor in respect of that amount...”
14. By agreeing to these terms, the plaintiff confirmed that the bank was at liberty to pursue her as a principal debtor without having sought the principal debtor, so long as there is prove of demand from the bank. This Court has stated consistently that parties are bound by the terms of their agreement and that it is not for the court to rewrite a contract between parties.
15. Even though it were true as the plaintiff states that the 2<sup>nd</sup> defendant was able and willing to make good the debt due to the plaintiff, there is no explanation as to why this has not been done necessitating the suit filed in court.
16. The plaintiff claims that she was not served with the 90-day statutory notice under section 90 of the *Land Act* 2012. The record however shows that the said statutory notice dated 24<sup>th</sup> November 2020 was sent to the plaintiff by registered post as evidenced by the certificate of postage. A 40-day notice of statutory power of sale dated 9<sup>th</sup> October 2023 was also sent by the same means using the same address. The two notices were also sent to the plaintiff by way of email to the same email address.
17. The plaintiff admits having received the latter notice. Having noted that the two notices were sent via the same means and address the claim that the former notice was not received is not plausible. In any case, I note that the postal address by which the notices were sent is the address as it appears on the charge and other documents executed by the plaintiff.
18. I am therefore not satisfied that the plaintiff has established that she has a prima facie case. In *Nguruman Limited V Jane Bonde Nielsen and 2 Others*, [2014] eKLR the Court stated that if the plaintiff is unable to satisfy this first condition, the issue as to whether damages are sufficient to compensate the plaintiff in the event the suit succeeds as well as the balance of convenience and where that lies, does not arise.

### **Disposition**

19. In the premises I find that the applicant has not made out a case for grant of injunctive orders. The application dated 30<sup>th</sup> November 2023 is dismissed with costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**F. MUGAMBI**

**JUDGE**

