



**Kamau v Letshego Kenya Limited & another (Civil Suit E008 of 2024)  
[2024] KEHC 11940 (KLR) (Commercial and Tax) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11940 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E008 OF 2024  
PM MULWA, J  
OCTOBER 3, 2024**

**BETWEEN**

**ANTONNETTE WAIRIMU KAMAU ..... PLAINTIFF**

**AND**

**LETSHEGO KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**WESTMINISTER COMMERCIAL AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff herein filed the application dated 11<sup>th</sup> January 2024 for a temporary injunction restraining the respondents their servants, officers, employees, assigns and/or agents or any other person acting for and/or on their behalf from advertising for sale, disposing off, alienating dealing with, selling by public auction or otherwise completing with the conveyancing or transfer of any sale concluded by public auction and/or private treaty or leasing, letting or otherwise interfering with the ownership of title number Mavoko Town block 3/56568 and Mavoko Town Block 3/56569 pending the hearing of the application.
2. The application is based on the grounds of the body of the motion, the supporting and further affidavits of Antonnette Wairimu Kamau filed on 11<sup>th</sup> January 2024 and 5<sup>th</sup> March 2024. She avers that the 1<sup>st</sup> respondent granted her a loan facility of Kshs. 5,500,000.00 which was secured with land parcels Nos. Mavoko Town Block 3/56568 and Mavoko Town Block 3/56569. A charge dated 7<sup>th</sup> September 2018 was created.
3. According to the plaintiff she has faithfully remitted the payments and was astonished when the 2<sup>nd</sup> respondent was instructed to auction the properties. She argued that the intended sale is illegal, unlawful, null and void as she was not served with the requisite statutory notices. That the valuation



report is untrue as she had since developed the property by building structures on it, and her request to redeem one property to offset the outstanding loan amount was rejected by the 1<sup>st</sup> respondent.

4. The application is opposed through the replying affidavit of Pesian Ketere, the 1<sup>st</sup> respondent's Recoveries Lead sworn on 14<sup>th</sup> February 2024. She depones that the two properties were used to secure the loan facility of Kshs. 5,500,000.00 which was to be paid in 72 monthly instalments at the rate of 14% per annum. A legal charge of Kshs. 3,800,000.00 was registered under Mavoko Town Block 3/56569 while a legal charge of Kshs. 1,700,000.00 was registered in favour of Mavoko Town Block 3/56568.
5. The applicant defaulted soon after the disbursement forcing the parties to restructure the loan and the repayment period was enhanced to 240 months with a monthly instalment of Kshs. 106,324.96. The plaintiff continued to default prompting the 1<sup>st</sup> respondent to issue all the required statutory notices and subsequently appointing the 2<sup>nd</sup> respondent to recover the properties. The loan amount in arrears as at 14<sup>th</sup> February 2024 was Kshs. 6,002,934.29.
6. The application was disposed by way of written submissions. The plaintiff's submissions are dated 24<sup>th</sup> April 2024 and those by the defendants are dated 7<sup>th</sup> May 2024.

### **Analysis and determination**

7. I have considered the motion filed, the affidavits in support and in opposition thereof together with the submissions as filed. The main issue for determination is whether the applicant has satisfied the conditions for granting a temporary injunction.
8. The principles for consideration before granting a temporary injunction have been elaborated in the celebrated case of *Giella v Cassman Brown and Co. Ltd* (1973) E.A. 358, and include:
  1. The plaintiff must establish that he has a prima facie case with high chances of success.
  2. That the plaintiff would suffer irreparable loss that cannot be compensated by an award of damages.
  3. If the court is in doubt, to whose side does the balance of convenience tilt.
9. These principles were reiterated by the Court of Appeal in the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court pronounced itself thus:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

  1. Establish his case only at a prima facie level,
  2. Demonstrate irreparable injury if a temporary injunction is not granted, and
  3. Allay any doubts as to (b) by showing that the balance of convenience is in his favour.”
10. The law governing the grant of injunction is Order 40(1) (a) and (b) of the Civil Procedure Rules. The proof that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, or that the defendant threatens or intends to remove or dispose of the property, is a crucial factor to consider before granting a temporary injunction.



11. An injunction is a discretionary remedy and the honour is placed on the applicant to demonstrate to the court that it is deserving of the orders. The court is to evaluate the evidence adduced and the sound legal principles. At this interlocutory stage, the court is reminded to refrain from considering the merit of the main suit.
12. The first principle a party seeking the intervention of the court must establish is a prima facie case. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125 elaborated on what constitutes a prima facie case:

“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.”
13. The applicant avers it has a high sentimental value on the suit properties and faults the respondent for failing to issue the necessary notices before advertising the suit for sale. On the other hand, the 1<sup>st</sup> defendant submits it complied by issuing the necessary statutory notices, but the applicant failed to remedy the default and repay the loan. According to the 1<sup>st</sup> defendant, the prayers sought in the instant motion have been spent and therefore there is nothing left for the court to grant.
14. The applicant does not dispute she defaulted in repayment of the loan in arrears, her main concern is that the 1<sup>st</sup> defendant declined to allow her to sell one property to redeem the loan. She also alleges undervaluation of the property. The Courts have variously held that undervaluation of a suit property cannot be used to stop the sale by auction. In *Zum Zum Investment Limited v Habib Bank Limited* (2014) eKLR the court held that in case of undervaluation there is a remedy under Section 99 (4) of the *Land Act* which states as follows:

“ 99.

(4) A person prejudiced by an unauthorized, improper or irregular exercise of the power of sale shall have a remedy in damages against the person exercising that power.”
15. From the record the two properties were used as collateral for the loan and the 1<sup>st</sup> defendant could only discharge the title if the loan amount had been fully settled. In instances of default, the defendant is duty bound to sell the charged property to recover the amounts due. Bearing the issues in mind, I am not persuaded that the applicant has demonstrated a prima facie case.
16. In the absence of a prima facie case, I do not find it necessary to consider the issue of sufficiency or not of damages to compensate the applicant in the event the suit succeeds. Neither will I consider the last principle of the balance of convenience. In the *Nguruman Limited* case (*supra*) the Court found that all three conditions be satisfied before considering granting an injunction.
17. Consequently, I find the plaintiff’s application dated 11<sup>th</sup> January 2024 lacking in merit and is dismissed with costs.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2024.**

**P. MULWA**



## **JUDGE**

In the presence of:

Ms. Gichana h/b for Mr. Wachira for plaintiff

Ms. Abobo for defendant

Court Assistant: Carlos

