



REPUBLIC OF KENYA



**Prime Bank Limited v Baryan & 2 others (Commercial Case E318 of 2022)  
[2023] KEHC 20403 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20403 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E318 OF 2022  
A MABEYA, J  
JUNE 16, 2023**

**BETWEEN**

**PRIME BANK LIMITED ..... PLAINTIFF**

**AND**

**RAJINDER SINGH BARYAN ..... 1<sup>ST</sup> DEFENDANT**

**PORSCHE CENTRE NAIROBI LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**KULPRIT KAUR TARLOCHAN (SUED AS THE EXECUTOR OF THE ESTATE  
OF TARLOCHAN SINGH CHAJJA SINGH DECEASED) ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application before court is dated 13/2/2023. It was brought under sections 1A, 1B and 3A of the [Civil Procedure Act](#), and Order 39 rule 5(1) and Order 40 Rule 1 of the [Civil Procedure Rules](#).
2. The application sought orders that pending the hearing of the suit, the 3<sup>rd</sup> respondent and her servants, agents and all other representatives be restrained from removing, transferring, disposing, charging or in any manner interfering with the assets of the deceased, Tarlochan Singh Heer including the assets described in prayer 3 (a), and (b) of the Motion.
3. The grounds for the application were to be found on the face of it and in the supporting affidavit sworn by George Mathui on 13/2/2023. It was contended that the deceased died on 14/2/2021 and 3<sup>rd</sup> defendant was appointed as his executor as she was his wife and the grant was confirmed on 23/1/2023.
4. That the defendants guaranteed banking facilities advanced to Multiple Hauliers E.A. Limited by the plaintiff. That the borrower had defaulted and the debt stood at Kshs. 499,204,074.58 as at 1/2/2022.



5. That upon confirmation of the grant, the deceased's executor was now free to distribute the estate of the deceased guarantor and such distribution would dissipate the attached assets rendering any decree infructuous.
6. The defendant opposed the application vide the grounds of opposition dated 17/2/2023 and her replying affidavit sworn on 17/2/2023. She admitted that she was the deceased's executor as per the grant confirmed on 23/1/2023. That she was the sole beneficiary of the estate of the deceased according to his will and there was no evidence that she intended to dispose of any assets nor remove them from the court's jurisdiction.
7. She contended that the applicant had not established a *prima facie* case as the application was *sub-judice* to Nairobi HC Insolvency Petition E010 of 2020 Synergy Industrial Credit v Multiple Hauliers (EA) Limited. That the defendants had filed an application dated 5/10/2022 seeking to stay the suit. That therefore, the applicant was not deserving of the orders sought.
8. The application was canvassed by way of written submissions. The applicant's were dated 23/2/2023 whereas those of the 3<sup>rd</sup> defendant were dated 23/2/2023. Those submissions have been considered. The main issue for determination is whether injunctive orders ought to be issued as prayed.
9. The conditions for consideration in granting an injunction is now well settled as held in the case of *Giella vs Cassman Brown & Company Limited* (1973) E A 358. These are that first, an applicant must show a *prima facie* case with a probability of success, secondly, that he must establish that might otherwise suffer loss and damage that cannot be compensated by an award of damages, and thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
10. On whether the plaintiff has a *prima facie* case with a probability of success, this court notes that the suit is founded on the banking facilities advanced to Multiple Hauliers E.A. Limited. It was contended that the loans had been guaranteed by the 1<sup>st</sup> and 2<sup>nd</sup> defendant as well as the deceased but the facilities have since been defaulted.
11. Evidence of these facilities and guarantees were provided for in the applicant's list of documents dated 18/8/2022. The 3<sup>rd</sup> defendant did not deny the allegations fronted as regards the guarantees signed by the deceased guarantor. It was also not denied that the loans had been defaulted.
12. The question is whether the deceased having willed all his personal properties to the 3<sup>rd</sup> defendant and the same having been vested in the 3<sup>rd</sup> defendant through Probate, whether the same can be available for realization by the plaintiff.
13. The view I take is that, upon the death of the deceased director having been advertised, the plaintiff should have lodged its claim so that the family Court could have lodged the same as part of the liabilities of the deceased upon his estate. There is no evidence that this claim was ever lodged. That being the case, the family Court may have vested the entire properties upon the 3<sup>rd</sup> defendant.
14. That being the case, is there any property in the estate that is capable of being sequestered? I don't think so. The bank having folded its hands and failed to lodge its claim as part of the deceased's liability, it cannot be heard now to pursue the 3<sup>rd</sup> defendant who has proved that the entire properties were willed to her. The probate having been confirmed, there are no properties available in the estate capable of attachment. They now belong to the 3<sup>rd</sup> defendant pursuant to the probate.
15. In view of the foregoing, I find that no *prima facie* case has been disclosed. I need not therefore deal with the other two limbs of *Giella vs Cassman Brown* case.



16. In the end, this Court finds that the application is without merit and the same is dismissed with costs to the defendants.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**

