



**Kimani & 4 others v Kcb Bank Kenya Ltd (Civil Case E715 of 2021)
[2025] KEHC 15439 (KLR) (Commercial and Tax) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15439 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E715 OF 2021
FG MUGAMBI, J
OCTOBER 31, 2025**

BETWEEN

**GABRIEL MAINA KIMANI 1ST APPLICANT
JOSEPH KAMAU MUNGAI 2ND APPLICANT
JOHN MWAURA NJOROGE 3RD APPLICANT
ERNEST GICHUKI GITHINJI 4TH APPLICANT
MONWALK INVESTMENT LTD 5TH APPLICANT**

AND

KCB BANK KENYA LTD RESPONDENT

RULING

1. The dispute between the parties stems from a financial arrangement in which the respondent Bank extended a credit facility to the 5th plaintiff (the company). This facility was secured by registered charges over properties owned by the 1st to 4th plaintiffs.
2. According to the bank, the company defaulted on the repayment obligations, prompting the issuance of statutory notices signaling the bank's intention to exercise its statutory power of sale. These notices triggered the plaintiffs' application, dated 29th July 2021, seeking injunctive relief to prevent the intended sale.
3. The application is supported by the affidavit of John Mwaura Njorogesworn on 29th July 2021. The deponent affirms that the company had consistently serviced the credit facility until global business disruptions caused by the COvID-19 pandemic adversely affected its operations. In light of these challenges, the company approached the Bank seeking a loan repayment holiday to safeguard



the company's continuity. The Bank granted this request and allowed a six-month moratorium on repayments.

4. Upon the expiry of the repayment holiday, the company resumed depositing funds into the business account designated for servicing the loan. However, in June and July 2021, the Bank, through its agents, served statutory notices of sale, dated 1st February and 13th May 2021, not directly to the plaintiffs but to tenants of the 1st and 3rd plaintiffs. These notices demanded that the plaintiffs settle an outstanding amount of KES 93,815,829.00 within 40 days.
5. The plaintiffs claim to have been taken by surprise, as neither they nor their spouses or the directors of the company had received prior communication regarding the notices. Given the short timeframe, they were left with no meaningful opportunity to redeem or preserve their properties in accordance with land laws governing the exercise of a chargee's power of sale.
6. The deponent further warns that any arbitrary enforcement of the Bank's statutory power such as advertising the sale would severely damage the plaintiffs' reputation, erode consumer confidence, reduce their creditworthiness, and ultimately hinder the company's ability to continue servicing the loan.
7. The deponent asserts that the Bank's failure to properly serve the statutory notice to the plaintiffs, their spouses, or the directors of the company has left the plaintiffs blindsided and deeply anxious, uncertain of when the bank might proceed with advertising or selling the charged properties without adhering to due process. In an effort to resolve the situation, the company sought to have the credit facility taken over by another financial institution, a move that was successful, but blatantly rejected by the Bank, thereby frustrating the company's attempt to regularize the facility and engage in fair trade.
8. The deponent contends that the Bank's premature and arbitrary invocation of its statutory power of sale undermines the plaintiffs' right to property. The plaintiffs describe the lack of service as a calculated attempt to surprise them and dispossess them of their property, amounting to an unlawful, inequitable, and illegal appropriation. The plaintiff's further take issue with the Bank's unilateral refusal to allow another financial institution to assume the credit facility. They see this as a deliberate obstruction of a lawful and reasonable resolution.
9. The application is opposed by way of a replying affidavit sworn on behalf of the Bank by FREDRICK MUNG'ATHIA on 27th October 2021. The parties also filed their respective submissions, which I have duly considered.

Analysis and Determination

10. The main issue for determination is whether the plaintiffs have met the threshold for granting the injunction orders they seek. Both parties acknowledge that the plaintiffs must satisfy the conditions established in *Giella v Cassman Brown & Co, Ltd*, [1973] EA 358. These conditions require the plaintiffs to demonstrate a prima facie case with a probability of success, show that they would suffer irreparable harm that could not be adequately compensated by damages, and, if the Court is in doubt, have the application determined on the balance of convenience.
11. These conditions are to be applied as separate, distinct and logical hurdles which the plaintiffs are expected to surmount sequentially which means that if they do not establish a prima facie case then irreparable injury and balance of convenience do not require consideration. See *Nguruman Limited v Jan Bonde Nielsen & 2 Others*, [2013] KECA 347 (KLR).



12. As to what constitutes a prima facie case, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others*, [2003] KECA 175 (KLR) explained as follows:
- “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.”
13. The underlying facts pertaining to the credit facility in question are not contested by either party. The central issue raised by the plaintiffs concerns the Bank’s alleged failure to issue and serve upon them the mandatory statutory notices as required under the *Land Act*. The plaintiffs contend that this omission effectively impaired their equity of redemption.
14. In matters involving statutory notices, once a chargor asserts that they did not receive the requisite notice, the burden of proof shifts to the chargee, in this case, the Bank, to demonstrate that such notices were duly issued and properly served. This principle was firmly established in the case of *Nyangilo Ochieng & Another v Fanuel B. Ochieng & 2 Others*, [1996] KECA 205 (KLR) where the Court of Appeal held that it is incumbent upon the chargee to provide evidence of service when the chargor disputes receipt. Failure to do so may render any subsequent enforcement action, such as the exercise of the statutory power of sale, legally defective and liable to be set aside.
15. In its bid to surmount this burden, the Bank has annexed the following documents to the replying affidavit, which are marked as FM1:
- i. A notice of default dated 26th November 2020 addressed to the directors of the company;
 - ii. A Statutory Notice under section 90 of the Lands Act, dated 1st February 2021 and addressed to the company as well as the 1st to 4th plaintiffs. The same was sent by registered post. The dispatch is evidenced by a schedule of dispatched registered emails received at the GPO Nairobi on 19th February 2021, containing the parcel numbers as well as the addresses of the various recipients including the plaintiffs.
 - iii. The Auctioneer’s Notification of Sale issued by Garam Investments together with the Certificates of Service confirming service to all the plaintiffs;
 - iv. 45 days Notices of Sale also sent to the plaintiffs including the company, via email and registered mail by Garam Auctioneers;
16. The plaintiffs have not disputed the validity or ownership of the addresses and email contacts that were used by the Bank and its agent in sending out the notices. In the absence of any denial or challenge to these communication channels, it stands to reason that the Bank fulfilled its obligation of serving the requisite notices. It would therefore be incorrect to assert that the plaintiffs were not duly served.
17. Regarding the assertion that the Bank withheld its consent for other financial institutions to assume the existing credit facility, I have examined the correspondence dated 1st February 2021. In that communication, the Bank expressly addressed the company’s directors, affirming its position and confirming its willingness to approve a full debt takeover by an alternative financier, provided that appropriate undertakings were made concerning the release of the pledged collateral.



18. This correspondence clearly demonstrates that the Bank did not obstruct the proposed assumption of the facility. At the time of this communication, the outstanding debt amounted to Kes 1.17 billion.
19. In light of the plaintiffs' financial history and their prior dealings with the Bank, it is not unreasonable that the Bank declined the request for refinancing based on a standby letter of credit proposed to be issued in favor of Secure Capital Investment Limited. The Bank's decision appears to have been informed by prudent commercial judgment and a reasonable assessment of risk. I am therefore satisfied that the Bank acted within its contractual and legal rights in declining to approve the facility.
20. Furthermore, there is no evidence before me to suggest that the plaintiffs subsequently approached the Bank with an alternative financier offering terms that were consistent with those previously accepted by the Bank.
21. At this point, I believe it is now obvious that the plaintiffs have not made out a prima facie case with a probability of success. Their inquiry on whether they are entitled to an injunction ends at this point in line with the dicta in *Nguruman Limited v Jane Bonde Nielsen and 2 Others* (supra). In any event, I find that any loss that is to be suffered by the plaintiffs can be ameliorated by an award of damages as per section 99 (4) of the *Land Act*. I have not been shown or told that the Bank is not capable of paying these damages. The balance of convenience also tilts in favour of the Bank realizing their security as early as possible so that the value of the suit property is not outstripped by the ballooning debt.

Disposition

22. The upshot of this is that the plaintiffs' application dated 29th July 2021 has no merit and it is dismissed with costs. Any existing interim orders are accordingly discharged.

DATED, SIGNED AND DELIVERED AT NAIROBI

THIS 31ST DAY OF OCTOBER 2025.

F. MUGAMBI

JUDGE

