



**Njau v Platinum Credit Limited (Commercial Case E079 of 2025)
[2025] KEHC 15751 (KLR) (Commercial and Tax) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E079 OF 2025
MN MWANGI, J
OCTOBER 31, 2025**

BETWEEN

ROSE NJERI NJAU PLAINTIFF

AND

PLATINUM CREDIT LIMITED DEFENDANT

RULING

1. The plaintiff filed a Chamber Summons application dated 3rd February 2025 pursuant to the provisions of Article 159(2)(c) of *the Constitution* of Kenya, Sections 1A, 1B, 3A & 63 of the *Civil Procedure Act*, Order 40 Rules 1, 2, 3 & 4 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 4 & 7(1) of the *Arbitration Act* and all other enabling laws. The plaintiff seeks an order of temporary injunction restraining the defendant from attaching or selling motor vehicle registration No. KDK 144T - Toyota Hilux, and for this Court to refer the dispute between the parties herein to arbitration.
2. The application is premised on the grounds on the face of the Summons. It is supported by an affidavit sworn on 4th February 2025 by Ms Rose Njeri Njau, the plaintiff herein. She averred that the contract between the parties herein dated 22nd August 2023 provides at Clause 17 that all disputes arising from the said contract shall be referred to arbitration. She contended that due to breaches and the subsequent repudiation of the contract, disputes arose between the parties herein, culminating in the seizure of motor vehicle registration number KDK 144T - Toyota Hilux on 27th November 2024 by the defendant's agents pursuant to a Court order dated 1st October 2024, while the vehicle was undergoing repairs at Hollywood Garage Limited.
3. Ms Njau contended that despite Hollywood Garage Limited obtaining injunctive Orders against the defendant over garage lien costs, the defendant proceeded to issue a Notice of Disposition of the vehicle. She stated that for that reason, she is apprehensive that the defendant may dispose of the suit



motor vehicle before the dispute between the parties herein is referred to arbitration, thus undermining their contractual and constitutional rights.

4. In opposition to the application, the defendant filed a replying affidavit sworn on 18th February 2025 by Mr. Richard Simbala, the defendant's Legal Officer. Mr. Simbala averred that on 22nd August 2023, the plaintiff obtained a Log Book Financing facility of Kshs.2,400,000/= and an Insurance Premium Finance facility of Kshs.168,896.00 secured by motor vehicle registration number KDK 144T - Toyota Hilux. He further averred that the loans were to be repaid in 24 monthly instalments and the defendant's interest was secured by joint registration of the suit motor vehicle under the Moveable Property Security Rights Act and installation of a tracking device. He deposed that the plaintiff defaulted from the onset by failing to pay instalments as agreed, and that despite repeated demands, partial payments, and instructions to Auctioneers, the plaintiff continued in default
5. Mr. Simbala asserted that by February 2024, no further payments were made and by September 2024, the arrears had risen to Kshs.3,785,737.71, with the outstanding balance standing at Kshs.4,360,408.43 as at 11th February 2025. He stated that the defendant repossessed the suit motor vehicle on 27th November 2024 under Police assistance and thereafter, the defendant issued a Notice of Disposition. He stated that the plaintiff's alleged repudiation of the contract on 4th April 2024 is invalid as the plaintiff was already in fundamental breach of the loan terms. Mr. Simbala averred that the interest, charges and the penalties applied are in line with the Agreement, and the plaintiff entered into the contract willingly. He further averred that the plaintiff also failed to disclose an accident involving the vehicle, further jeopardizing the defendant's interest.
6. In a rejoinder, the plaintiff filed a further affidavit sworn on 29th February 2025 by Ms Rose Njeri Njau, the plaintiff herein. She contended that the defendant failed to disclose that it responded to the repudiation notice through its letter dated 27th April 2024. She averred that under Clause 17.4 of the Agreement, obligations of the parties herein stood suspended upon repudiation, making the defendant's reliance on breach claims premature. She asserted that the parties herein are bound by their pleadings, thus the defendant cannot depart from the express terms of the contract.
7. The application herein was canvassed by way of written submissions. The plaintiff's submissions were filed on 7th March 2025 by the law firm of G. P. Muchai & Company Advocates, whereas the defendant's submissions were filed by the law firm of C.W Chege & Company Advocates on 12th March 2025.
8. Mr. Muchai, learned Counsel for the plaintiff cited Clause 7(1) of the *Arbitration Act* and submitted that the contract dated 22nd August 2023 was in writing and expressly provided for arbitration under Clause 17 thereof. He relied on the Court of Appeal case of National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd (2002) 2 EA. 503 [2011] eKLR, and urged this Court to give effect to Clause 17.3 of the Agreement dated 22nd August 2023. Counsel urged the Court to allow the application herein asserting that no prejudice will be suffered by the defendant, whereas disallowing the instant application would undermine justice and fair hearing.
9. Ms Mwanzile, learned Counsel for the defendant relied on the Court of Appeal case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), and submitted that the burden lies on the plaintiff to prove that the defendant infringed on her rights in order to establish a prima facie case, but the plaintiff has only alleged constitutional violations without specifying which rights were infringed or how. Counsel argued that mere assertions without supporting evidence are insufficient. She stated that the plaintiff had failed to establish a prima facie case to warrant being granted the injunctive reliefs sought.



10. She referred to the case of Rinya Hospital Limited v Co-operative Bank of Kenya Limited & Another [2011] KEHC 4082 (KLR), and stated that the defendant has shown that it advanced a loan which the plaintiff defaulted on, and the plaintiff is now using the Court process to evade her contractual obligations, something the Court should not permit. She relied on the case of Anthony Muthumbi Wachira & another v Housing Finance Company of Kenya [2015] KEHC 8143 (KLR), and submitted that Courts have consistently held that any property pledged as security for a loan is liable to sale if the borrower defaults on repayment. She argued that since the plaintiff pledged the suit motor vehicle as security, upon default, the defendant is entitled to sell it to recover the loan.
11. Ms Mwanzile asserted that even if the plaintiff's suit was to be successful, she could always recover its market value through valuation, thus the plaintiff cannot claim that she stands to suffer irreparable loss in the event that the instant application is disallowed. Counsel contended that the balance of convenience tilts in favour of the plaintiff.
12. She submitted that this Court lacks jurisdiction to refer the dispute between the parties herein to arbitration under Section 6 of the *Arbitration Act*, as no proceedings on the dispute have been instituted before any Court. Further, that since the parties herein are free to initiate arbitration proceedings independently, the order being sought is unnecessary and should not be granted.

Analysis And Determination.

13. I have considered the instant application, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying affidavit by the defendant and the written submissions by Counsel for the parties. The issue that arises for determination is whether the application herein is merited.
14. This Court's jurisdiction to grant interim measures of protection such as a temporary injunction being sought herein pending the commencement, hearing, and determination of arbitral proceedings, is conferred by Section 7(1) of the *Arbitration Act*, No. 4 of 1995 which states that -

It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.

15. It is not in contestation that the parties herein entered into a contract dated 22nd August 2023 and Clause 17 thereof provides that all disputes arising from the said contract shall be referred to arbitration. The said Clause provides -
 1. In case of a dispute regarding the loan facility herein or any transactions thereof, the Borrower can seek resolution from PCL in writing via the email feedback@platinumcredit.co.ke and subsequently via Call Centre No. +254 (0) 709 900 000 or 0730 900 000. PCL shall not be responsible for any matter unless the borrower has issued a direct written complaint to PCL as soon as reasonably practical and in any event one month after receipt of the statement setting the transaction complained of.
 2. Save as hereinabove provided all questions hereafter in dispute or controversies between the Parties hereto and all claims for compensation or otherwise not mutually settled or agreed between the parties shall be referred to arbitration.
 3. The award of the arbitrator shall, to the extent permitted by law, be final and binding



4. Unless this agreement has already been repudiated or terminated, the parties shall, (notwithstanding that any dispute is subject to the dispute resolution procedure set out in this agreement), continue to carry out their obligations in accordance with this agreement.
16. I am persuaded from the foregoing clauses that there is an existing arbitration agreement between the parties herein, to warrant this Court to refer this dispute to arbitration. Consequently, this Court finds that it has the requisite jurisdiction to grant interim orders aimed at preserving the subject matter of the arbitration and/or maintaining the status quo, thus ensuring that there is a dispute for hearing and determination before the Arbitrator.
17. The guiding principles in dealing with applications of this nature were laid down by the Court of Appeal in the case of *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* [2010] KECA 346 (KLR), where the Court held that -

Under our system of the law on arbitration the essentials which the court must take into account before issuing the interim measures of protection are: -

 1. The existence of an arbitration agreement.
 2. Whether the subject matter of arbitration is under threat.
 3. In the special circumstances which is the appropriate measure of protection after an assessment of the merits of the application.
 4. For what period must the measure be given especially if requested for before the commencement of the arbitration so as to avoid encroaching on the tribunal's decision-making power as intended by the parties.
18. In this case, the interim measure of being protection sought by the plaintiff is in the form of a temporary injunction. It is now well settled that an injunction is a discretionary remedy, granted upon consideration of the evidence and applicable legal principles. The Court in the case of *Giella v Cassman Brown & Company Limited* [1973] E A 358, laid down the principles to be considered when dealing with an application for an interlocutory injunction as hereunder -

Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.
19. In addition to the conditions laid down by the Court of Appeal in the case of *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* (supra), this Court shall also consider whether the plaintiff has met the conditions laid down by the Court in the case of *Giella v Cassman Brown & Company Limited* (supra), to warrant her being granted the orders sought herein.
20. The parties herein entered into a contract on 22nd August 2023. The plaintiff asserts that she repudiated the contract through a letter dated 4th April 2024, citing unilateral variation of the loan terms and conditions without her knowledge or involvement, imposition of interest, charges, and penalties inconsistent with the contract, infringement of her constitutional rights as a borrower, and contravention of various governing laws. This Court notes that vide a letter dated 27th April 2024, the defendant on a without prejudice basis, denied the plaintiff's allegations and demanded immediate settlement of the outstanding arrears on the loan account.



21. The defendant contends that the plaintiff defaulted on loan repayment obligations from the outset by failing to remit instalments as agreed. Further, that despite repeated demands, partial payments, and the involvement of Auctioneers, the plaintiff remained in default. The defendant averred that by February 2024 no further payments had been made and by September 2024 the arrears had accumulated to Kshs.3,785,737.71, with the outstanding balance standing at Kshs.4,360,408.43 as at 11th February 2025. Consequently, it repossessed the suit motor vehicle on 27th November 2024 with the assistance of the Police and thereafter issued a Notice of Disposition. In addition, the defendant maintains that the plaintiff's purported repudiation of the contract on 4th April 2024 was invalid, as she was already in fundamental breach of the loan terms. The defendant argues that the interest, charges, and penalties levied were consistent with the Agreement, which the plaintiff entered into voluntarily.
22. It is evident that the plaintiff willingly entered into the contract dated 22nd August 2023. She neither alleges nor demonstrates that her decision to do so was influenced by coercion, undue influence, or fraud. It is also undisputed that the plaintiff defaulted on her loan repayment obligations prior to issuing the letter dated 4th April 2024, in which she purported to repudiate the contract. Notwithstanding the said Notice, this Court is of the considered view that the plaintiff's repudiation did not bar the defendant from exercising its contractual right to recover the outstanding loan sums in accordance with Clause 17.4 of the contract.
23. Moreover, the contract does not obligate the defendant to submit claims arising from loan default to arbitration before repossessing the security. Clause 17 clearly deals with dispute resolution, not default in loan repayment. To my mind, accepting the plaintiff's contention that repudiation of a loan agreement in the face of default renders it unenforceable against the security deposited, in the absence of a Court Order, would set a dangerous precedent, which would allow borrowers to evade repayment obligations and unjustly restrict lenders from enforcing their contractual rights over the securities in their possession.
24. A prima facie case was defined by the Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (supra) as hereunder –

So, what is a “prima facie case” I would say that in civil cases it 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 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 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.
25. In this application, in light of the fact that the plaintiff voluntarily entered into the contract dated 22nd August 2023 without coercion, fraud or undue influence, and obtained financial facilities from the defendant to her benefit and does not dispute having defaulted on her loan repayment obligations, I am not persuaded that it would serve the interests of justice to restrain the defendant from exercising its rights over the suit motor vehicle, which was offered as security, solely on the basis that interest, charges, and penalties are alleged to be inconsistent with the contract terms. This Court further finds that the issues surrounding the injunctive reliefs issued in HCCOMM Misc. App. No. E1888 of 2024 in respect of the suit motor vehicle cannot be addressed by this Court. Compliance and/or non-compliance thereof should be addressed before the Trial Court in the said matter.
26. I am not persuaded that the plaintiff has demonstrated a prima facie case with a probability of success to warrant being granted the injunctive reliefs being sought herein.



27. Court precedents have determined that property offered as security becomes a commodity for sale in the event of default. See the case of Shimmers Plaza Limited v National Bank Of Kenya Limited [2013] KEHC 363 (KLR). Given the said decision, and considering the fact that the value of the suit motor vehicle can be readily determined through valuation, the defendant, being a financial institution would be capable of compensating the plaintiff if the suit is ultimately decided in her favour.
28. I am therefore persuaded that the plaintiffs do not stand to suffer irreparable damage that cannot be adequately compensated by an award of damages in the event that the instant application is not allowed.
29. From the foregoing, the question of balance of convenience does not arise in this case since the Court is not in doubt. Nevertheless, since the other conditions for interlocutory injunction have been established, the balance of convenience tilts in favour of the defendant.
30. This Court finds that the plaintiff has not made out a case to warrant being granted an order of temporary injunction and/or issuance of interim orders and/or measures of protection in the form of a temporary injunction.
31. In the end, I find that the plaintiff's application dated 3rd February 2025 is partly merited. As a result, I make the following orders –
- i. The dispute between the parties herein is hereby referred to arbitration; and
 - ii. Each party shall bear its own costs of the application by the plaintiff has succeeded partly.
- It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI ON THIS 31ST DAY OF OCTOBER 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:-

Ms Karango for the plaintiff/applicant

Mr. Orina for the defendant/respondent

Ms B. Wokabi – Court Assistant.

