REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CORAM: F. MUGAMBI, J

CIVIL CASE NO. E515 OF 2025

BETWEEN

CHASE BANK KENYA LIMITED ..... PLAINTIFF

VERSUS

EQUITY BANK KENYA ..... DEFENDANT

AND

RIVERSIDE MEWS LIMITED ..... INTERESTED PARTY

RULING

Background and Introduction

1. By an application dated 4th August 2025, the Plaintiff, Chase Bank Kenya Limited, (Chase Bank), seeks a permanent injunction to restrain the Defendant, Equity Bank Kenya, (Equity Bank), from selling or otherwise disposing of **L.R No. 4275/13 (I.R 74510),** Riverside Office Block (the suit

property), pending the hearing and determination of the main suit.

2. Chase Bank contends that the property forms the subject matter of proceedings in **HCCC No. 159 of 2017 (Chase Bank V Zafrullah Khan & Others**). It further asserts that Equity Bank has unilaterally restructured the loan facility owed to it, converting the facility from United States Dollars into Kenya Shillings at an exorbitant exchange rate of 145/=. Chase Bank fears that unless the injunction is granted, Equity Bank will proceed to dispose of the property, thereby causing irreparable harm to both Chase Bank and the interested party (Riverside Mews).

3. In opposing the application Equity Bank maintains that the restructuring of the loan facility was not unilateral, as Riverside Mews had been duly notified through a letter dated 8th March 2024 regarding the volatility of the Kenyan Shilling against the United States Dollar. Equity Bank further argues that Chase Bank is neither the registered proprietor of the property, nor its chargor, occupant, or holder of any recognizable

interest therein. It emphasizes that the property is not among those held in trust by Riverside Mews for the benefit of Chase Bank, as it does not appear in the Declaration of Trust dated 15th April 2016 relied upon by Chase Bank.

Analysis and Determination

4. Having carefully considered the parties' pleadings and submissions, the main issue for determination is whether Chase Bank has met the threshold for grant of orders of injunction as established in ***Giella V Cassman Brown & Co Ltd, [1973] EA 358***. These conditions require Chase Bank to demonstrate that it has a *prima facie* case with 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.

5. These conditions are applied as distinct, sequential hurdles which an applicant is expected to surmount sequentially. This means that if the applicant fails to establish a *prima facie* case, there

is no need to consider irreparable harm or the balance of convenience (see ***Nguruman Limited V Jan Bonde Nielsen & 2 Others, [2013] KECA 347 (KLR)***).

6. 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."***

7. Turning to the matter at hand, it is not in dispute that Equity Bank advanced facilities to Riverside Mews. The facility letters evidencing loans of USD

5,500,000 and USD 9,500,000 have been duly produced by Equity Bank. These facilities were secured, among other securities, by a charge and a further charge over the suit property, registered in favour of Equity Bank. The Charge dated 26th October 2012 and the Further Charge dated 13th May 2015 have likewise been placed before the Court. Both documents unequivocally establish that Riverside Mews was the borrower and chargor of the suit property.

8. On the other hand, Chase Bank's claim is founded upon the Declaration of Trust dated 23rd July 2014, which has not been placed before me, and the Declaration of Trust dated 15th April 2014. Upon careful examination of the latter, it is evident that the suit property is not among those expressly held in trust for Chase Bank under that instrument. In any event, even if a beneficial interest were to be asserted, Equity Bank would still hold a superior interest in the property by virtue of the charge, given that the suit property had already been charged to the Bank prior to the execution of the Declarations of Trust.

9. Chase Bank, through its receiver, was fully cognizant of this position, as demonstrated by the correspondence exchanged between the parties. In particular, the Kenya Deposit Insurance Corporation (KDIC), acting as receiver of Chase Bank, engaged Equity Bank with a proposal to redeem the suit property through negotiated payment terms. However, despite initially committing to the proposal, KDIC failed to implement it. Consequently, Equity Bank proceeded to issue the requisite notices and commenced the process of exercising its statutory power of sale.

10. With respect to the allegation of unilateral alteration of the facility terms, I find that Equity Bank's letter dated 8th March 2024, addressed to the Directors of Riverside Mews, provides a clear explanation for the variation. The Bank expressly grounded its decision on the prevailing volatility of the Kenya Shilling against the United States Dollar. The communication was not arbitrary. Rather, it was issued pursuant to **Clause 10, Section B** of the Letter of Offer, which had been duly executed

by both parties and which expressly conferred upon the Bank the discretion to vary terms.

11. Indeed, once Riverside Mews accepted the Letter of Offer, it became subject to the terms therein, including the Bank's right to adjust the facility to mitigate risks arising from foreign exchange volatility. I take the view that the Bank acted within its mandate to safeguard its financial exposure, and in the absence of any evidence, the variation cannot be construed as unlawful or oppressive. On the contrary, I am persuaded that such measure was reasonable and contemplated by the parties at the time of contracting, and executed in accordance with the agreed terms.

12. With respect to the Mareva injunction, I am not persuaded that the orders presently in force against Riverside Dew can be construed as binding upon, or preclusive of, any dealings with the charged property by a secured creditor. A Mareva injunction, by its very nature, is intended to preserve assets from dissipation pending the determination of a dispute, but it does not operate to extinguish or override proprietary rights lawfully

vested in a secured lender. To hold otherwise would amount to undermining the sanctity of charges and securities duly registered under the law. It would also cast a cloud of uncertainty over the banking and lending industry especially where the creditor was not a party to the injunction proceedings.

13. Accordingly, I find that the Mareva injunction issued against Riverside Dew cannot be interpreted as restricting Equity Bank, as a secured creditor, from exercising its statutory rights over the charged property. The Bank's interest, being proprietary and duly perfected through registration, must take precedence over any general restraint imposed upon the borrower's assets.

14. It is not disputed that the facilities advanced remain due and outstanding. While Chase Bank has argued that the conversion of the facility terms was unlawful, this contention alone cannot operate to restrain Equity Bank from exercising its statutory power of sale in order to recover the sums that continue to accrue.

15. Moreover, I have not been shown that any loss likely to be suffered by Chase Bank, should the sale proceed, would be incapable of being compensated by way of damages. The principle is well settled that an injunction will not issue where damages provide an adequate remedy. In the circumstances, the balance of convenience clearly tilts against the grant of the orders sought, as to restrain Equity Bank would be to deny it the enforcement of rights lawfully vested in it under the charge.

Disposition

16. From the foregoing, the inevitable conclusion is that Chase Bank has failed to satisfy the conditions laid down in ***Giella V Cassman Brown [supra]*** for the grant of a temporary injunction. Consequently, the application dated 4th August 2025 is hereby dismissed, with costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS *28TH* DAY OF *NOVEMBER* 2025.

F. MUGAMBI
JUDGE