



**Aberdare Mountain Fresh Limited & another v Kenya Development Corporation Limited (Commercial Case E763 of 2024)
[2025] KEHC 17886 (KLR) (Commercial and Tax) (1 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E763 OF 2024
JWW MONG'ARE, J
DECEMBER 1, 2025**

BETWEEN

ABERDARE MOUNTAIN FRESH LIMITED 1ST PLAINTIFF

GITAHU GACHAHI 2ND PLAINTIFF

AND

KENYA DEVELOPMENT CORPORATION LIMITED DEFENDANT

RULING

Introduction and Background

1. The court is being called to determine the Plaintiffs' application dated 16th December 2024 that seeks injunctive orders restraining the Defendant ("KDC") from selling the properties known as Tetu/ichagachiru/1459 and Nairobi/block 99/240 pending the suit's determination.
2. The application is supported by the grounds on its face and the supporting affidavit of the 2nd Plaintiff sworn on 16th December 2024. It is opposed by KDC through the replying affidavit of its Ag. Assistant Manager, Portfolio Management Department, Sarah Njoroge, sworn 24th February 2025. The application was canvassed by way of written submissions which I have considered and I will be making relevant references to them in my analysis and determination below.

Analysis and determination

3. As submitted by the parties, the main issue for determination is whether the court ought to grant the injunctive orders sought by the Plaintiffs. It is not in dispute that for them to obtain the injunction, they must demonstrate that they have a prima facie case with a probability of success, demonstrate irreparable injury which cannot be compensated by an award of damages if a temporary injunction



is not granted, and if the court is in doubt show that the balance of convenience is in their favour (See *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358). The parties further rightly submit that in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR), the Court of Appeal reiterated these conditions and further clarified that they are to be applied as separate, distinct and logical hurdles which an applicant is expected to surmount sequentially. This means that if the applicant does not establish a prima facie case, then irreparable injury and balance of convenience do not require consideration. On the other hand, if a prima facie case is established, then the court will consider the other conditions.

4. 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 that 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 to call for an explanation or rebuttal from the latter.” The Plaintiffs’ case is that KDC is acting contrary to the loan agreement by seeking to sell Tetu/ichagachiru/1459, which was only temporary security and that if KDC sells the subject properties, especially at a potential auction value far below market price, the 2nd Plaintiff will suffer irreparable loss that cannot be compensated by damages.
5. The Plaintiffs aver that they are not idle defaulters as they have secured a “Letter of No Objection” from KDC to sell the primary property and have other interested buyers, demonstrating a viable path to fully repay the loan but that a coordinated effort by the a third party tenant and a potential purchaser is unlawfully frustrating the sale, and KDC is proceeding with its sale threats despite being aware of these circumstances and the Plaintiffs’ repayment efforts. The Plaintiffs argue that KDC will not suffer any loss that cannot be remedied by damages if the injunction is granted, whereas the Plaintiffs stand to lose their prime properties permanently.
6. In response, KDC depones that it granted a Kshs. 56 million loan to the 1st Plaintiff which was secured by inter alia a legal charge over Nairobi/block 99/240 which was the primary security, a legal charge over Tetu/ichagachiru/1459 which was the secondary security and personal guarantees from the company’s directors, including the 2nd Plaintiff. KDC contends that the 1st Plaintiff has failed to make consistent repayments and as of 24th February 2024, the loan was in arrears of Kshs. 10,718,797.24, and the total outstanding balance has since grown significantly.
7. KDC asserts it has fully complied with the mandatory procedural steps required before selling charged property as per the *Land Act* including a 30-Day Default Notice sent on 28th February 2024, demanding regularization of the account, a 90-Day Statutory Notice sent on 27th May 2024 which the Plaintiffs acknowledged receipt and a 40-Day Redemption Notice sent on 16th September 2024 which the Plaintiffs also acknowledged receipt. KDC clarifies that while it is in the process of valuing the subject properties, it has not yet instructed an auctioneer or advertised the properties for sale.
8. KDC states that the secondary security was never discharged and remains valid because the Plaintiffs never formally requested its discharge after registering the primary security and it refutes allegations of ill intent, stating the sale is a legitimate exercise of its contractual and statutory rights. It argues that the Plaintiffs have not demonstrated that they will suffer irreparable loss that cannot be compensated by costs, especially since KDC, as a state corporation, has the resources to pay such costs.
9. KDC contends that the application is fatally defective and fails to meet the established legal principles for granting an injunction and it urges the court to dismiss the application with costs and compel the 1st Plaintiff to settle the full outstanding loan arrears immediately and continue with regular monthly payments. Alternatively, that if the court is inclined to grant an injunction, it should order the 1st Plaintiff to deposit the entire outstanding loan balance with KDC as security.



10. I have gone through the parties' pleadings and submissions. The Plaintiffs are admittedly in debt. KDC has issued and the Plaintiffs have received the requisite statutory notices. This means that KDC's statutory power sale of the subject properties has crystalized. On the validity of the securities, it has not been denied that the Nyeri property, that is, Tetu/Ichagachiru/1459, was a secondary security and KDC has stated that it is ready to discharge the same on request by the Plaintiffs. There is no evidence that the Plaintiffs have made such a request and that KDC has denied the same. This means that the said property remains to be valid security until it is discharged. On the significance of its default to the Bank, it is now trite that a court cannot grant an injunction solely on the ground that there is a dispute as to the amount due under an agreement (see *J. L. Lavuna And Others v Civil Servants Housing Co. Ltd. & Savings And Loan Kenya Ltd* [1995] KECA 111 (KLR)). In any case, KDC has annexed a Loan Statement showing a detailed transaction history which clearly shows sporadic payments and accumulating arrears of Kshs. 10,718,797.24 as of 24th Feb 2024, with the total debt growing to over Kshs. 63 million by 2025. This amount is not insignificant and the Plaintiffs cannot downplay their default.
11. On the allegation that KDC is acting with malice or ill will, The Plaintiffs themselves admitted that KDC gave them a "no objection" letter for them to sell the Nairobi property by themselves. This can only demonstrate goodwill and an attempt to find a solution because KDC is not obligated to do so. Further, whereas the Plaintiffs are apprehensive that the subject properties will be sold at an undervalue, any loss resulting from such a sale is finite and ascertainable and is awardable to the Plaintiffs after trial and KDC has deponed that it is capable of paying the same. Therefore, even if I am to assume that the subject properties have been undervalued, the same does not outrightly entitle the Plaintiffs to an injunction (see *Palmy Company Limited v Consolidated Bank of Kenya Limited* [2014] KEHC 4811 (KLR))
12. There is also no loss that will be suffered by the Plaintiffs from any sale that is incapable of being compensated by way of damages. This court has always held that there is no property, however sentimental or peculiar, that is incapable of being valued and damages awarded for it (see *Maina & another v Equity Bank Limited & 2 others* [2023] KEHC 23538 (KLR)).
13. In sum, I find that the Plaintiffs have failed to demonstrate a prima facie case and following the dicta in the *Nguruman* (Supra), their quest for an injunction comes to an end. However, whereas the Plaintiffs are not legally or equitably entitled to an injunction in the circumstances, KDC has stated that they are amenable to a conditional injunction. I would therefore allow this application by granting the Plaintiffs an injunction as sought by them but on condition that they settle all the loan arrears within 90 days

Conclusion and Disposition

14. In the foregoing, I now issue the following orders:-
 1. The Plaintiffs' application dated 16th December 2024 is hereby allowed on condition that the Plaintiffs settle the entire loan arrears within 90 days from the date of this order.
 2. In default of the order above, the application dated 16th December 2024 shall stand dismissed and all the prayers sought therein shall be deemed vacated without further reference to this court, and the Defendant will be at liberty to proceed to exercise its statutory power of sale of the subject properties
 3. The Plaintiffs shall bear the costs of this application

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF DECEMBER 2025



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J.W.W. MONGARE

JUDGE

In the presence of

1. . Kimathi for the Plaintiffs/Applicants.
2. Ms. Kariuki for the Defendant/Respondent.
- 3 Ivan - Court Assistant

