

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMM MISC. NO. E798 OF 2023

**KORARA HIGHLANDS TEA FACTORY
LTD.....APPLICANT**

VERSUS

**MICAH CHEBURET.....1ST
RESPONDENT**

**PAUL KIPLAGAT MARITIM.....2ND
RESPONDENT**

**REGISTRAR OF COMPANIES.....3RD
RESPONDENT**

**TITUS KIGEN.....4TH
RESPONDENT/APPLICANT**

**VICTOR KIPKOSGEI KIGEN.....5TH
RESPONDENT/APPLICANT**

AND

**KENYA COMMERCIAL BANK (PLC).....INTERESTED
PARTY**

RULING

1. What is pending for determination is the Notice of Motion dated 23rd April 2025 by the Applicant, Korara Highlands Tea Factory Limited, together with the 4th and 5th Respondents/Applicants, seeking interlocutory injunctive orders against the Interested Party, Kenya Commercial Bank

(PLC). The Applicants seek to restrain the Bank from advertising for sale, selling, transferring, taking possession of, or otherwise dealing with the charged properties known as Title Nos. Kajiado/Puriko/168, 173 & 174, LR No. 209/14144/3 and Title Nos. Kericho/Ngoina SS/108, 109 & 114, pending the hearing and determination of the suit.

2. The Applicants further seek orders compelling the Bank to render a true and accurate account of the loan facilities and restraining it from listing the Applicant and the 4th Respondent as loan defaulters with any credit reference bureau. The application is premised on the grounds on the face of the Motion and is supported by the affidavit of Titus Kigen, sworn on 23rd April 2025.
3. The application arises from credit facilities advanced by the Interested Party on or about 6th June 2023, comprising an overdraft, term loan, asset-based finance and insurance premium finance amounting to Kshs. 128,168,000 and USD 2,679,000. The Applicant contends that it has continued to service the facilities but that, notwithstanding such repayment, the Bank issued a statutory notice under Section 90 of the Land Act, 2012, demanding payment of Kshs. 281,058,678.51 and indicating an outstanding balance of Kshs. 1,057,412,903 as at 6th March 2025, followed by a redemption notice through Valley Auctioneers.
4. The Applicants challenge the statutory notice on the basis that it is defective and invalid for alleged non-compliance

with Sections 90(2) and 96(3) of the Land Act, contending that the notice was not served upon the two principal debtors and their spouses. They further allege that the Bank levied illegal, unconscionable and usurious interest and penalties, thereby clogging their equity of redemption. It is argued that the charged properties are unique and that damages would not be an adequate remedy should the sale proceed.

5. The Applicants also aver that they have secured a prospective sale of the company valued at up to USD 10 million, which would enable them to clear the outstanding indebtedness, and that unless restrained, the Bank's actions would occasion irreparable loss.
6. The application is opposed through a replying affidavit sworn on 14th May 2025 by Christine Mwangi, the Recovery Manager of the Interested Party. The Bank avers that between 2019 and 2022 the Applicant obtained several credit facilities secured by multiple legal charges over the suit properties; that the accounts are admittedly in arrears; and that the Applicant persistently defaulted despite repeated indulgences and restructuring discussions. It is the Bank's position that all statutory notices under Sections 90 and 96 of the Land Act were lawfully issued, duly served, and acknowledged, and that the application is intended to delay lawful recovery.

7. Parties filed written submissions, which I have carefully considered alongside the pleadings, affidavits and authorities cited.

Analysis and determination

8. The single issue that falls for determination is whether the Applicants have satisfied the threshold for the grant of interlocutory injunctive orders. Order 40 Rule 1 and 2 of the Civil Procedure Rules, 2010 provides that the court has powers to grant an order of temporary injunction to restrain such acts and prevent the wasting, damaging, alienation, sale, removal or disposition of the suit land. The power to grant a temporary injunction is in the discretion of the Court. This discretion, however, should be exercised reasonably, judiciously
9. The principles governing the grant of interlocutory injunctions are well settled. They were enunciated in **Giella v Cassman Brown & Co. Ltd [1973] EA 358** and subsequently reiterated by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others CA No. 77 of 2012 [2014] eKLR**, where the Court stated:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, 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 damages; and if the court is in doubt, then it can decide the application on a balance of convenience.”

10. The first limb for consideration is whether the Applicants have established a prima facie case with a probability of success. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR** 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.”

11. In the present case, it is not in dispute that the Applicant obtained the loan facilities from the Interested Party and charged the suit properties as security. It is equally not contested that the loan accounts are in arrears. The gravamen of the Applicants’ complaint relates principally to the quantum demanded and the alleged defectiveness of the statutory notices.

12. On the issue of statutory notices, the Interested Party has placed before the Court copies of the demand notices, statutory notices issued pursuant to Section 90, and notices of intention to sell under Section 96 of the Land Act. While the Applicants allege non-service on the principal debtors and their spouses, the Bank has demonstrated that the borrowers and chargors are the same persons, that the notices were served and acknowledged, and that the Applicants were at all material times aware of the status of their loan accounts. At this interlocutory stage, the Court is not persuaded that the Applicants have demonstrated any patent or fundamental non-compliance sufficient to invalidate the statutory power of sale.

13. With respect to the allegation of illegal or unconscionable interest, the Applicants have made broad assertions that the debt ballooned instead of diminishing. However, no expert evidence or detailed computations have been placed before the Court to demonstrate that the interest charged was unlawful or outside the contractual framework. The Interested Party, on the other hand, has demonstrated that the interest applied was contractually agreed and regularly communicated. The law is settled that a dispute as to accounts or interest computation, without more, is not a ground for an injunction and is compensable by damages. In **National Bank of Kenya Ltd v Shimmers Plaza Ltd [2009] eKLR**, the court of Appeal held that:

“A court of law cannot restrain a mortgagee from exercising its statutory power of sale merely on

the basis of alleged irregularities in the accounts or disputed figures. It must be shown that the statutory power of sale has arisen and that it is being exercised unlawfully or oppressively. Allegations of overcharging or disputes as to the exact amount owing, without more, do not constitute a basis for the grant of an injunction.”

14. In the circumstances, I find that the applicants have failed to establish a prima facie case.
15. On irreparable harm, the Applicants submit that the suit properties are unique and integral to their business. However, once land is offered as security for commercial borrowing, it becomes a commodity for sale. Any loss arising from its realization is ordinarily compensable by damages. The Applicant has not demonstrated that the Bank would be unable to compensate it should the suit ultimately succeed.
16. The assertion that a prospective investor has been identified does not, of itself, provide a legal basis to restrain the Bank from exercising accrued statutory rights. Courts cannot rewrite contracts for parties or suspend contractual rights on the basis of hoped-for future arrangements.
17. Accordingly, having failed to satisfy the first limb of the ***Giella*** test, the Applicants’ case collapses. As held in ***Nguruman*** (supra), where no prima facie case is established, the Court need not consider the other limbs. In

any event, the balance of convenience tilts in favour of allowing the chargee to exercise its statutory power of sale rather than indefinitely restraining recovery of an undisputed debt.

18. The upshot is that the Notice of Motion dated 23rd April 2025 is devoid of merit and is hereby dismissed with costs to the Interested Party.

It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **20th** day of **January** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Wachakana for Applicant

Mr. Tugee for 1st & 2nd Respondents

Mr. Muchiri for Interested Party

Court Assistant: *Carlos*