

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
COMMERCIAL & TAX DIVISION
MILIMANI LAW COURTS
HCCC E184 OF 2025

KEPPEL INVESTMENTS

LIMITED..... PLAINTIFF

-VS-

BANK OF BARODA KENYA

LIMITED.....DEFENDANT

RULING

1. Before the court is the plaintiff's notice of motion dated 22.4.2025 seeking: -

- (1) THAT a temporary injunction do issue restraining the defendant by itself, its servants or agents from selling by public auction, private treaty or otherwise and/or in any manner dealing **with Office Suite 401 erected on LR No. 209/20164 (Original Number 209/3356), Apartment Number B-9- "White Oak Apartments"- erected on L.R. No. 1870/11/341 (which is a portion of L.R. No. 1870/11/161), Apartment Number 5E on the 11th floor of Lotus Block erected on L.R.No.1870/1/571 and Apartment Number 3C on the 11th floor of Jasmine Block erected on**

L.R.No.1870/1/571 (the subject properties) pending the hearing and determination of the suit.

(2) Alternatively, an order under **sections 90 and 96 (2) of the Land Act**, prohibiting all further registration of change of ownership, lease, user, possession or title or interest in the subject properties in any land registry, government department and all other registering authorities.

2.The application is made under **Order 40 Rules 1 and 2 of the Civil Procedure Rules, Sections 3A and 63 (C) and (E) of the Civil Procedure Act.**

3.The application is supported by the affidavits sworn by the plaintiff's director, **Kirit K. Shah** on 22.4.2025 and 4.7.2025.

4.In opposition to the application, the defendant filed grounds of opposition dated 14.5.2025 and a replying affidavit sworn by its credit controller, **Wilson Mwaura** on 18.8.2025.

Background

5.The background is that the bank offered the plaintiff various facilities totalling Kshs.

438,230,000/-, governed by offer letters dated 18.9.2018 and 28.6.2019. The facilities are comprised of: -

(1)Overdrafts for working capital (Kshs. 70M and USD 125,000).

(2)Import finance letters of credit. USD 800,000

(3)Term Loan I: USD 766,000 for purchasing a plot at Tatu City (L.R. No. 28867/1).

(4)Term Loan II: USD 308,000

(5)Term Loan III: USD 560,000 for purchasing exercise book manufacturing machinery.

(6)Term Loan IV: Kshs. 115.5M for constructing godowns/warehouses on the Tatu City plot.

(7)Cheque discounting facility Kshs. 25,000,000/-

6.The plaintiff's case is that despite providing the agreed securities as required and paying the requisite Kshs. 1,092,500/- in stamp duty and Kshs. 250,000/- in legal fees, the defendant breached its obligations. Despite it engaging contractors and seeking approvals to build warehouses in the special economic zone, the defendant withheld approval to commence construction and refused to disburse the approved **Term Loan IV**.

7. The plaintiff claims that it requested a Standby Letter of Credit (SBLC) to import machinery from India (as per Term Loan III), but defendant ignored its requests.
8. The plaintiff further claims that when it sought to sell the Tatu City plot to offset the loan when the projects stalled due to the foregoing, the defendant delayed the consent by six months. It stated that the defendant claimed that the title deed was lost, suggesting that this was to conceal the fact that the defendant has failed to register a further legal charge.
9. The plaintiff contends that the defendant continued to levy excessive penalty interests and charges, totaling Kshs. 31,440,055/- as of December 2024, on facilities that were not disbursed or sabotaged by its actions. That the defendant coerced it to pay Kshs. 700,000/- in advocate fees against an already overdrawn account to process a provisional title.

Response

10. On its part, the defendant argued that the disbursements were conditional and that it was not obligated to release the funds as the plaintiff

failed to provide regulatory approvals and to submit the necessary bills, invoices and architect's certificates to verify the end of use.

11. The defendant also argued that the disbursement of Term Loans III and IV was contingent upon perfection of securities which was not completed.

12. The defendant denied maliciously refusing to issue the standby letter of credit (SBLC), claiming that it was not part of the original facility letters. It was a request for a new facility. It highlighted that the plaintiff's **HDFC Bank** in **Bahrain** declined any form of engagement with it on the SBLC as it could only deal with a tier 1 bank.

13. The defendant admitted that the title deed was misplaced at **Ardhi House, Ministry of Lands** while in the process of registration of the further charge, but claimed that it was not due to its negligence or fraud. It intimated that the plaintiff appointed the firm of **M/S Gathaiya & Associates** which was handed over the further charge and original title for purposes of perfecting the further charge.

14. The defendant asserted that if there were losses on account of foreign exchange fluctuations, the

same cannot be attributed to it. The defendant further asserted that the relationship between the parties was strictly contractual, governed by the offer letters and charge documents. Therefore, the defendant claims it owed no separate duty of care or legitimate expectation to fund the plaintiff's projects outside the strict terms of those contracts.

15. The defendant stated that it was not aware of the Kshs. 700,000/- payment.

16. The defendant further stated that underlying facility and the charge on the **Tatu city** property is still outstanding and that the lack of registration of the further charge has no bearing on them.

17. The defendant asserted that the interests and penalties levied were imposed strictly in accordance with the charge and that the plaintiff's allegations of unconscionability are a mere afterthought.

Submissions

18. The plaintiff filed initial and supplementary written submissions dated 4.7.2025 and 14.10.2025.

19. The plaintiff submitted that having fulfilled its obligations under the contracts, it has a legitimate expectation that the defendant would fulfil its own. It asserted that since the defendant was the author of its misfortune, it is estopped from demanding or seeking payment from it. For this proposition, it relied on **Central London Property Trust v High Trees House Limited [1947] KB 130** on the doctrine of promissory estoppel.

20. The plaintiff submitted that it has established the condition for the grant of the injunctive reliefs. It argued that it has established a *prima facie* case as it has raised triable issues. It relied on **Silpack Industries Ltd v ABSA Bank PLC & another (Commercial Case E230 of 2024) [2024] KEHC 9919 (KLR) (Commercial and Tax) (31 July 2024) (Ruling)** where the court granted an injunction against the sale of the plaintiff's properties as the bank had by its conduct sought to enrich itself unjustly, which was inequitable.

21. The plaintiff asserted that if the injunctive reliefs are not granted, it will suffer irreparable harm that cannot be compensated by damages. There are a

total of 4 different high value properties given as security for the various financial facilities granted and approved by the defendant. All these are at risk of sale by the defendant upon the questionable circumstances.

22.The plaintiff further asserted that the balance of convenience tilts in favour of preserving the suit properties pending the hearing and determination of the suit upon the merits.

23.The defendant filed written submissions dated 30.9.2025.

24.The defendant contended that the plaintiff has not met the conditions for the grant of the injunctive orders. It relied on **Giella v Cassman Brown (1973) EA 358, Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 [2014] eKLR, Moses C. Muhia Njoroge & 2 others v Jane W Lesaloi and 5 others [2014] eKLR and Mrao Ltd v First American Bank of Kenya and 2 others [2003] KLR 125**

25.The defendant submitted that where a debt is admitted or the evidence of default is overwhelming, the applicant fails the *prima facie*

test. It added that a chargor who has admitted or proved default cannot seek an equitable remedy to restrain a chargee from exercising its statutory power of sale, unless there is demonstrated illegality or fraud in the process. It also submitted that the plaintiff has not disclosed any right capable of protection in equity as the relationship between the parties is contractual.

26. The defendant relied on **Julius Mainye Angeya v Ecobank Kenya Limited [2014] eKLR** and **Kwality Candies & Sweets Limited v Industrial Development Bank Limited** to argue that a court of equity cannot and should not aid a person whose default is the very reason why a statutory power of sale is being exercised.

27. The defendant further relied on **John Edward Ouko v National Industrial Credit Bank Limited Mombasa HCCC No. 99 of 2013**.

28. The defendant submitted that the plaintiff has relied on unsubstantiated claims of malice and sabotage without producing contemporaneous correspondence, approvals or other documentary proof for it to disburse funds as stipulated in the letters of offer and duly executed charges.

29.The defendant relied on **Lucy Nungari Ngigi & 4 others v National Bank of Kenya Limited & another [2015] KEHC 8191 (KLR)** to assert that the court ought to refrain from delving into the contested merits of the contractual relationship at this interlocutory stage which are for trial.

30.The defendant relied on **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)** to argue that the equitable jurisdiction of the court cannot be invoked to rewrite contracts between parties.

31.The defendant submitted that the charged properties are commercial in nature and their value is readily ascertainable in monetary terms. Any alleged prejudice arising from their realization can be quantified and compensated by an award *of* damages, should the plaintiff ultimately succeed at trial. It highlighted that the plaintiff's own supplementary affidavit at paragraph 15 admits that no irreparable harm shall be suffered as it quantifies its alleged loss at USD 800,000.

32.In support, the defendant relied on **Andrew Muriuki Wanjohi v Equity Building Society**

Ltd & Another [2006] ECLR, Stephen Michuki Kiunga v National Bank of Kenya Ltd [2018] eCLR and Pius Kipchirchir Kogo versus Frank Kimeli Tenai [2018] eCLR

33. The defendant finally submitted that the balance of convenience tilts in its favour as it will be deprived of the contractual remedy for recovering a significant outstanding debt and **will** suffer continuing financial exposure. It relied on **Charter House Investments Ltd v Simon K. Sang and Others, (Civil Appeal No. 315 of 2004) [2010] eCLR**

Analysis and Determination

34. The issue for determination is whether the plaintiff has met the conditions for the grant of temporary injunctive reliefs sought pending the hearing and determination of this suit.

35. An applicant who: a) a *prima facie* case with a probability of success; b) that irreparable harm that cannot be compensated by way of damages if the injunction is not granted; and c) that the balance of convenience tilts in favour of granting the injunction, sends out the light and the impetus

that brings the court to issue an injunction. **Giella v Cassman Brown [supra]**

36. A *prima facie* case is one which on evidence presented, there exists a right which has apparently been infringed by the opposite party. **Mrao Ltd v First American Bank of Kenya Ltd [supra]**

37. Yet, "...in considering whether or not a *prima facie* case has been established, the court does not hold a mini trial and must not examine the merits of the case closely." **Nguruman Limited v Jan Bonde Nielsen & 2 Others [supra]**

38. I have considered the parties' respective arguments and upon reviewing the material on record.

Loss of title deed

39. The plaintiff claimed that when it sought to sell the Tatu City plot to offset the loan when the projects stalled due to the foregoing, the defendant delayed the consent by six months. It stated that the defendant claimed that the title deed was lost, suggesting that this was to conceal the fact that the defendant has failed to register a further legal charge.

40. The defendant admitted that the title deed was misplaced at **Ardhi House, Ministry of Lands** while in the process of registration of the further charge, but claimed that it was not due to its negligence or fraud. It intimated that the plaintiff appointed the firm of **M/S Gathaiya & Associates** which was handed over the further charge and original title for purposes of perfecting the further charge.

41. On prima facie basis, the explanation provided is plausible and may not yield negligence on the part of the defendant.

Alleged breach of contractual obligations

42. The plaintiff made specific claims. More specifically, that despite providing the agreed securities as required and paying the requisite Kshs. 1,092,500/- in stamp duty and Kshs. 250,000/- in legal fees, the defendant breached its obligations.

43. Further, the plaintiff stated that, despite it engaging contractors and seeking approvals to build warehouses in the special economic zone, the defendant withheld approval to commence

construction and refused to disburse the approved **Term Loan IV**.

44. Thus, argued the plaintiff, that having fulfilled its obligations under the contracts, it has a legitimate expectation that the defendant would fulfil its own. It asserted that since the defendant was the author of its misfortune, it is estopped from demanding or seeking payment from it.

45. The defendant argued that the disbursements were conditional and that it was not obligated to release the funds as the plaintiff failed to provide regulatory approvals and to submit the necessary bills, invoices and architect's certificates to verify the end of use.

46. According to the defendant submitted that the plaintiff has relied on unsubstantiated claims of malice and sabotage without producing contemporaneous correspondence, approvals or other documentary proof for it to disburse funds as stipulated in the letters of offer and duly executed charges.

47. The claims made by the plaintiff are specific and should be established as such in order to establish a prima facie case with a probability of success.

48. But, other than claiming that the defendant breached the contract, the plaintiff did not show the matters complained of formed the defendant's contractual obligations, hence, the breach. It did not also establish it complied fully with the terms and conditions of the contract and charges herein.

49. The defendant's assertion that the plaintiff has relied on unsubstantiated claims of malice and sabotage without producing contemporaneous correspondence, approvals or other documentary proof for it to disburse funds as stipulated in the letters of offer and duly executed charges, makes perfect sense.

50. Therefore, the plaintiff has not established a *prima facie* case.

51. The case of **Silpack Industries Ltd v ABSA Bank PLC & another [supra]** is distinguishable as it related to a case where the defendant bank withheld insurance compensation from the plaintiff.

52. The plaintiff has also not established that it will suffer irreparable harm that cannot be compensated by damages if the orders sought are not granted.

53.The balance of convenience tilts in favour of the defendant as the facility is outstanding.

Disposal

54.The upshot is that the plaintiff's application dated 22.4.2025 is dismissed with costs.

Dated, signed and delivered at Nairobi through Microsoft Teams online application this 19th day of February, 2026

F. Gikonyo M

Judge

In the presence of: -

Ms. Njeri for Respondent

Isindu for Plaintiff

CA - Ivan/Aggrey