



**Kentmore Company Limited & another v Kenya Commercial Bank (Commercial Case E100 of 2024) [2025] KEHC 510 (KLR) (Commercial and Tax) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 510 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E100 OF 2024  
JWW MONG'ARE, J  
JANUARY 27, 2025**

**BETWEEN**

**KENTMORE COMPANY LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**FAMIELECTRICALS LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KENYA COMMERCIAL BANK ..... DEFENDANT**

**RULING**

1. What is before the court is an application dated 29<sup>th</sup> February 2024 brought by the Plaintiff under Order 50 Rule 1 and Order 40 of the Civil Procedure Rules, Sections 3 and 3A of the [Civil Procedure Act](#) seeking the following Orders:-

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1}}.

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2}}.

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3}}.

4. That a Temporary Injunction be issued restraining the Defendant, the Defendant’s Directors, their agents, their auctioneers, employees, servants, workers, assignees, and/or associates or any other person(s) claiming through them from auctioning, selling, offering for public sale, transferring, proclaiming, attaching and /or in any way whenever and whatever interfering with Parcel of Land L.R. No. 209/14336 measuring approximately 0.4820 of a hectare or 1.1910 of an acre situate at Karen Road, Karen Area of Nairobi City County pending the hearing and determination of this suit.



5. That injunctive orders be issued stopping the operation and/or taking effect of the forty-five (45) days redemption notice dated 9<sup>th</sup> February 2024 and Notification of Sale of Immovable Property pending the hearing and determination of this suit.
6. That in the alternative to Prayer 4 and 5 above, the Honourable Court be pleased to issue an order directing the Respondent to accept the Plaintiff's offer to settle the outstanding loan amount at Kshs. 1,200,000/= per month until full payment.

7. The grounds of this application be provided for.

2. The application is supported on the grounds set out on its face and the supporting affidavit of MARK NDUNGU. It is opposed and the Defendants have filed a replying affidavit sworn by AMINA JILLO on 5<sup>th</sup> April 2024. Both parties pursuant to the directions of the court have filed written submissions which I have considered.

### **Analysis and Determination:-**

3. A careful analysis of the pleadings and the supporting affidavit to this application reveal that the Applicant does not question the charge in place. The Applicant admits to the existence of a charge from the Defendant Bank of Kshs.75,000,000/= which was secured by a legal charge over the suit property L.R 209/14336. Indeed, what appears to be the dispute here is the Notices issued to the Plaintiff by the Defendant pursuant to its exercise of its Statutory power of sale. The Plaintiff argues that the Notice under Section 90 of the Land Act (2012) ought to have addressed the following issues:-
  - a. The nature and extent of default.
  - b. If the default consists of the non-payment of any money due under the charge, the amount must be paid to rectify the default and the time, being not less than 3 months, by the end of which the payment in default must have been completed.
4. The Applicant further faults the demand of the sum of Kshs. 81,614.006.65/= which they allege does not reflect the instalments they have paid over the life of the loan. They urge the court to restrain the Defendants from continuing to issue the said notices and require that doe order the Defendant to accept their proposed payment by instalments of Kshs. 1,200,000/= until the loan is repaid in full.
5. In opposing the Application, the Respondent filed a replying affidavit on 5<sup>th</sup> April 2024. It is the Respondent's case that its statutory power of sale has validly accrued on account of the Plaintiffs failure to service the loan as per the terms of the loan agreement thereto and that in its issuing the notices it did so pursuant to its statutory power of sale under the charge.
6. Order 40 Rule 1 of the Civil procedure Rules provides as follows
  - “ 1. Cases in which temporary injunction may be granted [Order 40, rule 1]
 

Where in any suit it is proved by affidavit or otherwise—(a)that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or(b)that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of



the property as the court thinks fit until the disposal of the suit or until further orders.

7. A party seeking injunctive orders must satisfy the parameters that are now well settled in law in the Locus Classica case of *Giella Vs. Cassman Brown & Co., Ltd.* [1973] E.A. 358. The court in that case stated that a party seeking for injunctive relief ought to satisfy the court that it is deserving of the orders sought by demonstrating a prima facie case with a probability of success, that it will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if it does not establish a prima facie case then irreparable injury and balance of convenience do not require consideration (see *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2013] KECA 347 (KLR)).
8. 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.
9. It settled law that one can only be granted an order for injunction if the application satisfies the three parameters set out above in *Giella*(supra). The question that this court needs to answer is whether the Applicant has established a prima facie case to warrant a consideration of the two parameters. The Applicant admits to having obtained a loan facility from the Defendant and does also confirm that indeed the loan was secured by a legal charge over the property known as L.R. 209/14336 situated within Karen Area of Nairobi County. The Applicant has not controverted the assertions put forward by the Defendant that the loan was unserviced and therefore necessitating the Defendant to proceed and enforce its rights under its Statutory Power of sale guaranteed by the charge. Indeed, the issue of default is reinforced by the Plaintiffs’ prayers before this court seeking to liquidate the loan in monthly instalments of Kshs.1,200,000/= till payment in full.
10. I have considered carefully the arguments put forward by the Plaintiff. I note that the Plaintiff has admitted to being indebted to the Bank and it is my considered view that the Bank is within its legal rights to issue the requisite notices in exercise of its statutory power of sale and in accordance with the law. I am therefore not persuaded that the Plaintiff has established a prima facie case to warrant this court to grant the orders sought. This therefore means that court will not, in accordance with the holding in *Nguruman Ltd*(supra) consider the other two parameters necessary for an order of injunction to issue.
11. The net effect of the above is that the court finds and holds that the application by the Plaintiff filed on 29/2/2024 is therefore without merit. The same is hereby dismissed with costs to the Defendant. The interim orders issued thereto are vacated forthwith. It is so ordered.

**DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 27<sup>th</sup> DAY OF JANUARY 2025**

.....

**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-



1. Mr. Osoro for the Plaintiff/Applicant.
2. Mr. Odhiambo for the Defendant/ Respondents.
3. Amos - Court Assistant

