



TRV Developers Limited v NCBA Bank Kenya PLC & another (Commercial Case E548 of 2023) [2025] KEHC 1029 (KLR) (Commercial and Tax) (28 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E548 OF 2023
JWW MONG'ARE, J
FEBRUARY 28, 2025**

BETWEEN

TRV DEVELOPERS LIMITED PLAINTIFF

AND

NCBA BANK KENYA PLC 1ST DEFENDANT

TRIBHOVAN LALJI CCHAVDA 2ND DEFENDANT

RULING

1. What is before this court is a Notice of Motion application filed on 20/5/2024 by the Plaintiff/Applicant under a Certificate of Urgency filed pursuant to Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#) seeking the following orders:-
 1. Spent
 2. Spent
 3. That pending the hearing and determination of this application , this Honourable Court be pleased to grant temporary injunction restraining the Respondent from selling, offering for sale, leasing, entering into occupation(whether acting jointly or severally or through their successors, assignees, servants or agent or the assignees, servants or agents of any of them) from interfering with the Applicant's right, title and interest in the Applicant's property Land Reference Number 209/21933 (Original No. 209/1/18) known as TRV Towers and TRV Centre and also restraining the Respondent from trespassing upon the suit property.
 4. That pending the hearing and determination of the main suit, this Honourable Court be pleased to grant a permanent injunction restraining the Respondent from selling, offering



for sale, leasing, entering into occupation (whether acting jointly or severally or through their successors, assignees, servants or agent or the assignees, servants or agents of any of them) from interfering with the Applicant's right, title and interest in the Applicant's property Land Reference Number 209/21933 (Original No. 209/1/18) known as TRV TOWERS and TRV Centre and also restraining the Respondent from trespassing upon the suit property.

5. That costs of this application be provided for
 6. That this Honourable Court be pleased to make any other or further orders as the circumstances and interest of justice may require.
2. The application is supported by the grounds set out on its face and the supporting affidavit of Purshottam Premji Shah sworn on 20th May 2024. The application is opposed and the 1st Defendant has filed a replying affidavit sworn by Kenneth Mawira, an advocate of the High Court of Kenya and the 1st Defendant's Senior Legal Counsel- Corporate Banking, Global Markets and Gen. Ops. The application was canvassed by written submissions on the directions of the court. Both the Applicant and the 1st Respondent have filed their written submission which I have considered.

Analysis and Determination

3. Having therefore considered the pleadings and the supporting affidavit of the Applicant and the response and written submissions of the Defendant, I find that the only issue that arises for determination is whether the Applicant has established the threshold for this court to grant the orders of Temporary Injunction pending the hearing and determination of the present suit.
4. I do not think it is in dispute that for an order of injunction to issue, the Plaintiff is required to satisfy the conditions set out in the case of *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358 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)).
5. The parties also agree that what constitutes "a prima facie case" was set out by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) 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.
6. A prima facie case flows from what has been pleaded in the plaint. A look at the Plaint filed herein by the Plaintiff on 9/11/2023 contains affirmations that the Plaintiff and the 1st Defendant enjoyed a bank- customer relationship and indeed the Plaintiff was advanced a construction loan by the Bank to develop the premises known as TRV towers on the suit property Land Reference 0020 Number 209/21933 which was given by the Plaintiff to the Bank as security to secure the loan.
7. The Plaintiff acknowledges that it is indeed indebted to the 1st Defendant Bank and confirms that it allowed the Defendant to charge its property on LR No. 209/21933 (original No. 209/1/18) as security for the loan. The Applicant puts the blame for its failure to fully service the loan on the failure of



- the Bank to meet its obligation under the loan agreement by failing to ensure all funds for the units developed in the suit property once sold the funds would be deposited in an escrow account and be utilised for clearing and or ensuring that the Bank loan is fully redeemed. In addition, the Applicant argues that the Defendant has denied its information on the status of the loan account making it impossible to confirm their indebtedness therein and forcing the Applicant to move the court for enforcement of its rights under the loan. The said legal action was initiated through the filing of a several court matters being HCCOMMMISC/E922/2023- TRV VS NCBA Bank where the Bank was ordered to avail the necessary records to allow the Applicant examine and evaluate the financial record.
8. The Applicant takes issue with the statutory notices issued by the Defendant pursuant to its power of sale under the charge and argues that the said notices are unlawful and irregular as the intended sale by public auction includes units that have already been purchased by 3rd parties and are not available for disposal. In any event, the Applicant argues that the Defendant is yet to undertake a current valuation of the suit property to determine its market and forced sale value for purposes off the Public Auction and as required by law. They therefore urge the court to restrain the Defendant from proceeding with the intended sale of the suit premises.
 9. In opposing this application, the Defendant filed a replying affidavit sworn by Kenneth Mawira, a Senior Legal Counsel in the employment of the Defendant. The Defendant argues that it has taken the necessary legal steps to enforce its rights under the charge in pursuit of its statutory power of sale under the charge. It argues that it took the steps to issue the statutory notices once the loan fell in arrears and the same despite notice were not cleared or the loan serviced. The Respondent avers that the loan stands at a sum of Kshs.637,971,899/= and there has been no attempt by the Applicant to repay it or service the loan accounts as per the agreement and its obligations under the charge.
 10. The Respondent denies that it was responsible for ensuring that sale proceeds of individual units were deposited in the proper account and places blame for any deviation to the agreement by the parties on the Applicant who was the account holder and the party responsible for the payment of the loan. He Defendant confirms that pursuant to the orders issued in HCCOMMMISC No. E922/2023, it provided all the necessary documents to the Applicant and that the Applicant filed and withdrew other Miscellaneous Application whose intention was to derail the Defendant from pursuing the recovery of its debt. The Defendant argues that the Applicant is not deserving of the orders sought as it has failed to comply with its duty and obligations created by the charge herein and that the loan remaining unpaid prejudices the Defendant as it unable to recover the funds advanced to the Applicant. The Defendant has urged the court to find that the application is without merit and dismiss the same.
 11. I have carefully considered the arguments put forward by the parties. Both parties acknowledge that there is a loan that is in arrears and that the Bank hold a legal charge over the suit property known as 209/21933. The Plaintiff acknowledges that it has indeed been served with the necessary statutory notices under the charge. As stated in the Mrao case(supra), a party must establish as a first step to a grant of injunctive relief that it has a prima facie with a likelihood off success. The arguments of the Applicant that it has not been availed documents necessary to determine its indebtedness cannot be a reason why a party has neglected its obligations under a charge. In any event, these orders were subject of the HCCOMMMISC Case No. E922/2023 and the Respondent confirms that it complied with the said order. The Applicant did not rebut or controvert this argument or provide evidence to the contrary.
 12. Courts have held that a challenge based on lack of recent valuation cannot be the sole ground upon which a party is estopped from exercising its rights in law. This challenge, it has been argued is one that its compensable with an award of damages. I find therefore that the Applicant has failed to demonstrate it has a prima facie case with high chances of success.



13. The Court in Nguruman Ltd (Supra) has urged that the three elements necessary for a grant of injunction be considered separately and sequentially such that if the first one is not proved, the court need not consider the other two. I will therefore not consider whether the denial of the Injunctive orders would occasion the Applicant irreparable injury incapable of being compensated by an award of damages.
14. In conclusion I find that the Application of 20th May 2024 by the Plaintiff is without merit. The same is dismissed with costs to the Defendant. Any interim orders issued herein before are discharged and vacated. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Mr. Ogendo for the Applicant.
2. Ms. Mutisya for the Respondent/Defendant.
3. Mr. Awour for the Interested Party.
4. Amos - Court Assistant

