



REPUBLIC OF KENYA



**Meru Wood Industries Ltd & 2 others v KCB Bank Kenya Ltd & another (Commercial Case E423 of 2024) [2025] KEHC 1000 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1000 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E423 OF 2024  
FG MUGAMBI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**MERU WOOD INDUSTRIES LTD ..... 1<sup>ST</sup> PLAINTIFF  
JUSTUS MAKERO NGUU ..... 2<sup>ND</sup> PLAINTIFF  
EMILY MURUGI NGUU ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**KCB BANK KENYA LTD ..... 1<sup>ST</sup> DEFENDANT  
G.G KAMIRI T/A WESTMINISTER COMMERCIAL AUCTIONEERS .... 2<sup>ND</sup>  
DEFENDANT**

**RULING**

**Introduction and Background**

1. Before court is an application dated 30/7/2024 brought under Order 40 rule 1,2,3,4 and 8 of the [Civil Procedure Rules](#) 2010 and Section 3A of the [Civil Procedure Act](#).
2. The application seeks injunctive orders to restrain the respondents or their agents from advertising for sale, disposing off and interfering with the applicants' property being house number 5 on L.R. NO 330/229 Lavington Court Bernard Estate (herein the suit property). The application is supported by the affidavits sworn by Justus M. Nguu and further buttressed by submissions dated 13/11/2024.
3. The applicants confirm that the 1<sup>st</sup> applicant (the Company) approached the 1<sup>st</sup> respondent (the Bank) for a credit facility for purposes of asset finance, which was advanced to Kshs 112,500,000/=. The facility was secured by the 2<sup>nd</sup> and 3<sup>rd</sup> applicants' property known as L.R. No 330/229 in Lavington



court (the suit property). The facility was utilized to purchase the property known as L.R No 12715/16 which was also part of the securities.

4. The applicants contend that the respondents issued them with a recovery notice and were in the verge of selling the suit property without justifiable cause.
5. The applicants argue that the Bank improperly amalgamated and combined two separate loan facilities belonging to different entities. They assert that Meru Highlands Dairy Limited and Meru Wood Industries Limited are distinct entities and that it was unlawful for the Bank to recover a loan owed by Meru Highlands Dairy Limited from Meru Wood Industries Limited. Additionally, they claim that they were not served with the 90-day statutory notices as required under Section 90(1) of the Land Act and only received a notification of sale. They also deny having been provided with a true record of accounts or a valuation report.
6. The Bank opposes the application through a replying affidavit sworn by Joseph Muli, supported by written submissions dated 20/11/2024. The Bank confirms that credit facilities were extended to the Company and were secured by amongst others the suit property, an all-asset debenture over the Company's assets, and personal guarantees and indemnities executed by the 2nd and 3rd applicants.
7. The Bank further asserts that the Company defaulted on its monthly loan repayments, a fact acknowledged by the Company when it sought various accommodations. Despite the Bank granting these accommodations, the default persisted, prompting the issuance of a 90-day statutory notice and a further 40-day notification of sale. The Bank also confirms that the Company was served with the 45-day redemption notice.
8. The Bank confirms that the bullet payment of Kshs. 20,000,000/= made on 9/10/2023 towards the loan was insufficient to settle the outstanding balance. It also refutes the claim that it consolidated the two accounts, maintaining that it has kept separate accounts for each company and that the arrears for each entity have been accounted for independently.

### **Analysis and Determination**

9. The application was argued through written submissions, which I have carefully considered along with the application, responses, and evidence presented by the parties. The key issue for determination is whether the applicant has established a case for the injunctive relief sought.
10. The parties acknowledge that the applicants must satisfy the conditions established in *Giella v. Cassman Brown & Co., Ltd.* [1973] E.A. 358. These conditions require the plaintiffs to demonstrate a prima facie case with a probability of success, show that they would suffer irreparable harm that could not be adequately compensated by damages, and, if the court is in doubt, have the application determined on the balance of convenience.
11. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya Limited and 2 Others* [2003] eKLR explained what amounts to a prima facie case as;  

“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.”
12. It is evident that the Company is indebted to the Bank in the amount of Kshs. 158,296,269.30 as at 15/7/2024. This is evidenced by the bank statements provided, covering the period from 7/7/2019 up to 15/7/2024 (pages 276-299). For clarity, these bank statements pertain specifically to the account of



- Meru Wood Industries Limited. Under Section 176 of the *Evidence Act*, they constitute prima facie evidence of the outstanding loan.
13. The facilities are also supported by evidence of letters of offer executed by the Company, along with securities including debentures, guarantees, indemnities, and the charge, all duly executed on behalf of the Company. Following the Company's default, the Bank and the Company exchanged numerous correspondences (pages 205–210), all of which were between these two parties. This directly contradicts the allegation that loan accounts for two different entities were improperly combined.
  14. A review of the Bank's documents further confirms that following the default, a 90-day statutory notice dated 23/5/2023 (page 212-214) was sent to the applicants via registered post. The 1<sup>st</sup> respondent has provided a dispatch form confirming that the registered mail was received by the General Post Office in Nairobi (page 216). Additionally, a 40-day notice was issued on 25/10/2023, pages 217-219) with a corresponding dispatch form showing that it was also received by the General Post Office. Further evidence indicates that a 45-day redemption notice was served on the applicants personally, via email and through registered post (pages 266-269).
  15. Based on the evidence presented, I find that the Bank has sufficiently discharged its burden of proof and demonstrated that the required statutory notices were properly served in accordance with the law. Notably, all these notices specifically reference the Company's loan default, further discrediting the claim that there was a mix-up of loan accounts.
  16. The valuation report found on pages 235–253 serves as evidence that a valuation was indeed conducted on the suit property. The report, dated 20th September 2023, further disproves the claim that no such valuation took place.
  17. I believe it is now obvious that the applicants have not made out a prima facie case with a probability of success. The inquiry on whether they are entitled to an injunction ends at this point in line with the dicta in *Nguruman Limited v Jane Bonde Nielsen and 2 Others*(supra). In any event, I find that any loss that is to be suffered by them can ameliorated by an award of damages as per section 99(4) of the *Land Act*. I have not been shown or told that the Bank is not capable of paying these damages.
  18. The balance of convenience also tilts in favour of the Bank realizing their security as early as possible so that the value of the suit property is not outstripped by the ballooning debt.

### **Disposition**

19. Accordingly, the application dated 30/7/2024 is devoid of merit and the same is dismissed with costs.

**SIGNED IN NAIROBI**

**F. MUGAMBI**

**JUDGE**

**DATED AND DELIVERED IN NAIROBI THIS 27<sup>th</sup> DAY OF FEBRUARY 2025.**

**A. VISRAM**

**JUDGE**

