



**Njeru Industries Limited & another v I & M Bank Limited (Commercial Case E599 of 2024)  
[2025] KEHC 12497 (KLR) (Commercial and Tax) (1 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12497 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E599 OF 2024  
JWW MONG'ARE, J  
SEPTEMBER 1, 2025**

**BETWEEN**

**NJERU INDUSTRIES LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**HENRY PAUL NJERU (SUING ON BEHALF OF THE ESTATE OF PROTASIO  
NJERU) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**I & M BANK LIMITED ..... DEFENDANT**

**RULING**

**Introduction and Background**

1. By an application dated 14<sup>th</sup> October 2024, the Plaintiffs have moved this court under a certificate of urgency filed under Article 40 of the *Constitution* of Kenya, Order 5 Rule 1 of the *Civil Procedure Rules* and Section 1A,1B, and 3A of the *Civil Procedure Act* and they seek the following reliefs:-
  1. Spent
  2. Spent
  3. spent
  4. That a temporary order be and is hereby issued restraining the Defendant either by itself, its agents, servants and/or representatives from repossessing, advertising, selling, disposing of, offering for sale or alienating in any manner whatsoever any of the Applicant's properties, assets, machinery, stock, Land Title Number Ntima/Igoki/1880, Title Number Ntima/Igoki/4331, Title Number Nyambene Kirindine "A"/4598, Title Number Nyambene Kirindine "A"/1146, Title Number Nyambene Kirindine "A"/169, Title Number Nyambene



Kirindine “A”/141, Title Number Nyambene Kirindine “A”/118, Title Number Nyambene Kirindine “A”/74, and or equipment’s any part thereof pending the hearing and determination of the suit.

5. That a temporary order be issued be issued restraining the Defendant from appointing a receiver and or manager over the Applicant’s properties, assets, machinery, stock, land, equipment’s or any part thereof and or interfering with the Applicants’ peaceful and quite possession and enjoyment of its properties pending the hearing and determination of the suit.
  6. Spent
  7. That pending the hearing and determination of this Suit an order of injunction do issue restraining the Defendant either by itself, its agents, servants and/ or representatives from listing the Applicant with any Credit Reference Bureau institution or from taking any adverse action including freezing accounts or escalating the loan terms.
  8. That an order of temporary injunction do issue restraining the Defendant either by itself, its agents, servants and /or representatives from communicating with other third-party lenders, reaching out to the media or in any other way interfering with the 1<sup>st</sup> Applicant’s business pending hearing and determination of the suit.
  9. That this Honourable court be pleased to issue an order compelling the Defendant to provide copies of proper and accurate statements of all the loan accounts in the name of the 1<sup>st</sup> Applicant.
  10. That costs of this Application be awarded to the Applicants.
2. The Application is supported by the grounds set out on its face and the supporting and further affidavits by Henry Paul Njeru sworn on 4<sup>th</sup> October 2024 and 16<sup>th</sup> February 2025 respectively. The Application is opposed and the Defendant has filed a Replying and Further Affidavits sworn by Samuel Irungu on 13<sup>th</sup> November 2024 and 7<sup>th</sup> April 2025 respectively. Both parties have filed their written submissions which I have considered carefully.
  3. It is the applicants’ case that the issuance of the various demands by the Defendant threatening to commence recovery proceedings against the Applicant and its intention to exercise its statutory power of sale over the charged properties were done prematurely as the alleged debt owed to the Defendants by the Applicants is disputed. The Plaintiffs argue that the Defendant has failed to provide them with the evidence of the statements showing the alleged debt and that they have failed to demonstrate their compliance with the law in the recovery process. The Applicants argue that the demands by the Defendant are premised on the terms of the deed of Settlement agreement whose terms they argue are oppressive and unconscionable and geared to deprive them their right to property.
  4. In addition, the Applicants argue that they have made attempts to repay the loan borrowed and argue that from a principal loan advanced of USD 4,750,000, they have repaid towards the principal the sum of USD 1,620,125.27 plus interest amounting to USD 3,326,869.62 bringing the total repayment to USD 4,946,994.89 and urge that the loan should be considered fully repaid.
  5. It is further the arguments advanced by the Applicants that the properties charged to the Defendant to secure thee loan facilities forms part of the Estate of the late Protasio Njeru and should not be disposed off before succession is completed as to do so will amount to violation of the right to property of the intended beneficiaries that is enshrined in the Constitution of Kenya at Article 40 thereof.



6. The Applicants urge the Court to restrain the Defendants and from invoking their statutory power of sale over the charged properties until parties agree what is owing under the secured loan facilities.
7. In responding to the Application and in opposition thereto the Defendant filed two affidavits sworn by Samuel Irungu, a senior manager in the credit Department of the Defendant. The Defendant has also filed a statement of defence to the main suit. It is the position taken by the Defendants that the Applicant obtained several loans secured by various legal instruments including charges, debentures, corporate and personal guarantees and having defaulted in its obligations to satisfy the loan, the Defendant is within its rights to proceed and exercise its statutory power of sale, which, it has done, under the said instruments following the issuance of various demands as envisioned by the law. The Defendant argues that the present application is an attempt by the Applicants to deny the Defendants its rights under the said instruments which have since accrued.
8. The Defendant further avers that the loans so granted included long and short-term loans and that the long-term loans have been in persistent default necessitating parties to enter into prolonged negotiations that resulted in a deed of settlement executed by both parties. The Deed of Settlement was to organize all the outstanding loans into one space and set out the new repayment terms, which terms, the Defendant argues that the Applicants have violated. The Defendant argues that the present suit is brought solely to delay and stop the Defendant from exercising its right to recover the outstanding loans as guaranteed by law and in line with the legal charges and debentures that went to secure the borrowing.
9. The Defendant further avers that the Applicants offered the various securities voluntarily and without coercion or undue influence and has annexed a schedule to demonstrate that the parties have had a long-standing client-bank relationship with the Bank offering to the Applicants various financial facilities at their request whose repayment has not been as per the agreed terms necessitating the Defendant to pursue its rights as enshrined in the various contracts therein. The Defendant argues that it has kept the Applicants aware of the status of loans and has annexed various bank statements issued to the Applicants to demonstrate that the Applicants have all along been made aware when the loans were not performing as per their agreed terms. It is the Defendants position that the Applicants have taken no steps to remedy the default and they are therefore within their rights to exercise their statutory power of sale as per the law allowed. They urge the court to dismiss the application and vacate the interim orders which have inhibited their inability to progress to the next steps towards having the charged securities realized either through sale by publication or appointment of a receiver or administrator over the assets of the borrower.
10. The Defendant argues that the Applicant have demonstrated bad faith as despite their various attempts to obtain an extension and look for alternative sources of financing their business which resulted in the deed of settlement where the Defendant agreed to waive part of the accrued interest, and affording the Applicants the necessary accommodation, the loans remain in default and the present suit is aimed at manufacturing grievances which are unsupported by the actual facts and all the efforts that have been put into resolving the matter. The Defendant argues that the Applicants are the authors of their own misfortune and cannot ask the court to aid them in wrong doing.

### **Analysis and Determination**

11. I have carefully considered the pleadings filed by the parties and the rival submissions in support and in opposition to the motion before this court and note that the main issue for the court's determination is whether the injunctive orders sought by the Applicants should be granted. The parties agree that Applicants needs to satisfy the conditions set out in the three-part test for a temporary injunction, as



outlined in *Giella v Cassman Brown & Co., Ltd.* [1973] E.A. 358: and must demonstrate that they have a strong prima facie case with a likelihood of success), that is, demonstrate 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 Applicants are expected to surmount sequentially which means that if it do 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))

12. A prima facie flows from what is pleaded in the plaint and includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court 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 (see *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR)). I have gone through Applicants’ plaint which mirrors their arguments highlighted in the introductory part above and note that the Applicants do not deny that they are indebted to the Defendant herein. What appears to be in issue is whether the loans are due and owing and if the move taken by the Defendant to call for the repayment of the full loan debt as a precursor to exercising its statutory power of sale is warranted.
13. The second argument is that the properties charged to secure the loans herein are part of the Estate of Protasio Njeru and the same is under succession and the applicants argue that any action taken to alienate and sell the same by the Defendant would prejudice the intended heirs and beneficiaries to the said Estate and deprive them of their right to property as enshrined under article 40 of the *Constitution*.
14. I have considered these arguments put forward by the Applicants and the response by the Defendants. I agree with the Defendant that the Applicant cannot have their cake and eat it. The Applicant admit to being indebted to the Defendant. They have gone, from the material presented in the application, to great length to obtain accommodation or delay the recall which has included new terms and conditions being agreed upon by and between the parties as evidenced by the Deed of Settlement agreements and the accommodation by the Defendant allowing the Applicants more time to remedy the Default. I have also noted that statements annexed to the affidavits herein point to the fact that the Applicants have actively been kept abreast of the status of the loans and have made various attempts to find other measures including bringing a consultant to take over the management of the 1<sup>st</sup> Applicant and turn it into profitability. Other than disputing the timing of the Demand Notices, the Applicants do not appear to provide a repayment proposal of the loan debt. The documents annexed to both the Applicants and the Defendant’s affidavits point to a prolonged and intense discussions and negotiations on the repayment that resulted in a deed of settlement, which the Applicants, in filing the present suit appear keen to abandon. I also note that despite allegations that the same was procured through coercion or fraud, there is no material placed before this court to support the said allegations. In the end, they remain mere allegations with little or no probative or evidential value and are not capable of persuading the court that there is an infringement of the Applicants rights that requires the court to intervene and protect.
15. On the second argument that these properties charged to secure the borrowing are part of the Estate of the late Protasio Njeru, founding director of the 1<sup>st</sup> Applicant, I agree with the Defendant’s argument that the Bank has the first right of lien over the said properties and wish to reiterate the position held by the courts that once a property is offered as security for a loan, it becomes a commodity for sale. I find therefore balancing the arguments put forward by the parties, the application has failed the first of the 3-step test on establishing a prima facie case to warrant the court to move to consider the two other parameters for a grant of injunctive orders as sought herein. I will therefore, in line with the holding in



Nguruman ltd(supra), not proceed to consider the two other parameters on irreparable loss or where the balance of convenience tilts.

16. From the above, it is clear that Applicants have not made out a prima facie case against the Defendant to warrant this court to restrain the Defendant from proceeding to exercise its statutory power of sale.

### **Conclusion & Disposition**

17. In the foregoing, I now dismiss the Plaintiff's application dated 14<sup>th</sup> October 2024 with costs awarded to the Defendant. The interim orders in place now stand vacated and discharged. It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2025**

**J.W.W. MONGARE**

**JUDGE**

In The Presence Of

Ms. Mbelete for the Plaintiff.

Ms. Mwai & Ms. Kiende for the Defendant.

Amos- Court Assistant

