



Ologe v Agricultural Finance Corporation & another (Civil Appeal E071 of 2021) [2023] KEHC 21392 (KLR) (28 July 2023) (Judgment)

Neutral citation: [2023] KEHC 21392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E071 OF 2021**

**DK KEMEL, J
JULY 28, 2023**

BETWEEN

DISMAS ETYANG OLOGE APPELLANT

AND

AGRICULTURAL FINANCE CORPORATION 1ST RESPONDENT

WASHINGTON WAFULA 2ND RESPONDENT

(Being an appeal arising from the judgment of Hon. M.O. Onditi, Senior Principal Magistrate, Bungoma in Bungoma CMCC No. 381 of 2001 delivered on 14th June 2013.)

JUDGMENT

1. Vide a Complaint dated 3rd August 2001, the Appellant herein sued the Respondents claiming: an order discharging the Plaintiff from the contract and an injunction restraining the defendant by itself, its servants or otherwise from auctioning the Plaintiff's parcels of land namely South Teso/Amukura/1189 and costs and interest of the suit.
2. In its judgement dated 14th June 2013, the trial Court held that the Plaintiff's loan facility with the Defendant was not fully cleared and thus he could not be discharged from the contract. Further, the Court granted an injunction restraining the Defendant by itself, its servants or otherwise from auctioning the Plaintiff's parcels of land namely South Teso/Amukura/1189 because it was not the Plaintiff's deliberate failure to pay back the Kshs. 16,000 because it was the 3rd Party who was obliged to refund Kshs. 16,000/= plus interest to the Defendant. The Court ordered the 3rd party to pay costs of the suit and interest on costs to both the Plaintiff and the Defendant.
3. Aggrieved by the judgement of the trial Court, the Appellant lodged his Memorandum of Appeal dated 24th November 2021, on the following grounds:



- i. The learned trial Magistrate erred in law and fact when she misapprehended the nature of the suit that was before her for decision thereby arriving at findings that were inconclusive and unhelpful to the parties.
 - ii. The learned trial Magistrate erred in law and fact by failing to arrive at definitive findings on the prayers of the Appellant which she was called upon to do.
 - iii. The learned trial Magistrate erred in law and fact when due the nature of her imprecise findings, she left the parties in perpetual confusion.
 - iv. The learned trial Magistrate erred in law and fact when, having found that the Appellant was no longer liable in contract to the 1st Respondent, still declined to completely discharge him.
 - v. The learned trial Magistrate erred in law and fact in that, despite finding the Appellant owed no obligation to the 1st Respondent to repay the balance of the loan, nevertheless failed to order for discharge of his mortgaged property.
 - vi. The learned trial Magistrate erred in law and fact when she left both the Appellant and the 1st Respondent in limbo, even after clearing them.
 - vii. The learned trial Magistrate erred in law and fact in granting an injunction with no end in sight.
4. He prayed for the appeal to be allowed and that appropriate and conclusive orders be made to discharge the Appellant and his property from the contract and that the costs of the appeal.
 5. The appeal was canvassed by way of written submissions. Only the Appellant and the 1st Respondent filed and exchanged their respective submissions.
 6. Vide submissions dated 13th January 2023 and filed on 16th January 2023, the Appellant submitted that he sought a declaration in the trial Court to the effect that the 1st Respondent was in breach of the Contract by failing to deliver the heifers as contracted and that the Court did not expressly grant this prayer as it was expected to. Counsel further submitted that the Corporation made it a policy to deliver the animals to the farmers itself to avoid a situation where the borrower could put money to a use that was not intended. The 1st Respondent was obliged under the Contract to deliver the animals from whatever source and its failure to do so was putting the Appellant in a very precarious situation to start servicing a loan even when the 1st Respondent had not delivered on a fundamental term of the contract. According to the Appellant this was a contractual relationship between the 1st and 2nd Respondent which the Appellant had no privity to their contract.
 7. Counsel submitted that the 3rd party was found culpable by the trial Court and did direct that he should take the responsibility that would otherwise have been that of the Appellant. The 1st Respondent was given the leeway to pursue the 2nd Respondent for recovery of the outstanding loan and interest.
 8. Counsel placed reliance on Order 42 Rule 25 and Rule 32 and the case of *China Zhogxing Construction Company limited vs Ann Akuru Sophia* (2020) eKLR. He urged this Court to allow the appeal with costs.
 9. Opposing the appeal, the 1st Respondent by submissions dated 24th January 2023 and filed on 29th January 2023 submitted that it was not in issue that the Appellant secured a loan of Kshs. 45,000/= and only Kshs. 29,000/= was paid to him while the Kshs. 16,000/= was channeled to the 2nd Respondent herein for purposes of delivering grade animals to the Appellant which he failed to do. The 1st Respondent submitted that as per the evidence of the Appellant, he only paid back Kshs. 36,000/= thus there was a balance as he had been given a loan of Kshs. 45,000/=.



10. Counsel submitted that an agreement dated 4th November 1989 brought about a relationship with the Appellant and the 1st Respondent about the issue of interest which was never paid by the Appellant and thus the obligation of the Appellant was not fulfilled as the principal amount was never paid in full and likewise the interest was not paid at all. Counsel argued that the Judgement of the Court was simply on the principal amount of Kshs. 16,000/= and who was to pay the same and that the trial Court further noted that the Appellant is yet to fully pay his loan facility with the 1st Respondent.
11. Counsel submitted that if the Appellant found absurdity in the judgement, the same was not room for appeal as he ought to have approached the Court vide the slip rule as sections 99 & 100 of the Civil Procedure Act gives room for any accidental slip or omission to be corrected either of its own motion or on the application of any parties. Counsel urged this Court to find the appeal unmerited and dismiss the same with costs to the 1st Respondent.
12. It is imperative to analyze the evidence tendered before the trial court. It was the evidence of PW1, Dismas Etyang Olege that he is a retired Public Health Officer and a farmer. According to him, in April 1987 he approached the 1st Respondent's Busia Branch for a loan and an agreement was duly executed on 4th May 1987 between himself and the 1st Respondent. He produced the agreement dated 4th May 1987 as PEXH.1. He was given part of the loan for farm development and purchase of certain article and an expenditure form dated 6th May 1987 which he produced as PEXH.2. He told the Court that part of the loan of Kshs. 29,000/= was released to him. He proceeded to make the necessary preparation for the arrival of the animals but he never received them. He went back to the 1st Respondent's offices and informed them that his farm was ready to receive the animals and that they directed him to one Mr. Wafula, a prominent farmer in Busia. He produced the letter showing the remarks by various officers as PEXH.3. The veterinaries inspected the animals and three of them were pregnant but the owner refused to hand them over to him on grounds of payment. He produced the veterinary health Certificates form as PEXH.4(a), (b) and (c) respectively. Mr. Wafula gave them an invoice dated 7th January 1988 for Kshs. 24,000/= to the 1st Respondent. The invoice dated 7th January 1998 was produced as PEXH.5. 1st Respondent wrote a cheque of Kshs. 16,000/= to Mr. Wafula. He further produced a letter from the 1st Respondent to Mr. Wafula dated 2nd June 1989 as PEXH5. On 12th July 1988 Mr. Wafula sent a telegram to him which he produced the same as PEXH.6. He told the Court that a letter from 1st Respondent dated 25th July 1990 showed that they were to refund him the money but he was never refunded. He produced the said letter dated 25th July 1990 as PEXH.7.
13. It was his evidence that earlier on he received a letter dated 30th May 1990 from the District Commissioner and that he got Kshs. 7, 900/=. The letter dated 30th May 1990 was produced as PEXH.8.
14. He told the Court that he was given 29,000/= from the advanced facility and that Kshs. 16,000/= was released to Mr. Wafula. The animals that Mr. Wafula was supposed to deliver to him were not delivered and that he had started to pay the loan facility as correspondences continued. He told the Court that he paid the 1st Respondent Kshs. 36,000/=: Kshs. 20,000/= through the check off system through Kenya Ports Authority who was his employer then and he paid the rest Kshs. 16,000/= in cash. This was per his availed documents which were produced as PEXH.17 to PEXH.25.
15. It was his testimony that he filed a suit in Kakamega vide number 220 of 1992 against Mr. Wafula but later withdrew the same and he produced a letter of withdrawal of the case dated 10th December 2003 marked as PEXH.28. He received a demand notice from the 1st Respondent asking him to pay Kshs. 146, 444/= which prompted him to file the suit herein. He told the Court that he did not pay the 1st



- Respondent the amounts demanded as they had breached the agreement. He prayed for his land titles South Teso/Amukura/1189 and South Teso/Apokor/1254 be released to him.
16. On cross examination, he told the Court that he sought the loan from the 1st Respondent and that the requirement was stipulated in the document he produced as PEXH.2 which does not indicate on paragraph two that the 1st Respondent was to give him cash to buy animals. According to the document he produced as PEXH.1, The 1st Respondent was entitled to give him the money or the animals and that as per PEXH.2, he did not affix his signature on paragraph 2. He told the Court that the 1st Respondent refunded him Kshs. 7, 900/= from the Kshs. 16,000/= that was channelled to the 2nd Respondent.
 17. He told the Court that he borrowed a total of Kshs. 45,000/= from the 1st Respondent and he did not know the exact amount he was supposed to pay back and that he does not owe them money form the loan he took as he already paid back 36,000/=.
 18. On re-examination, he told the Court that he secured a loan facility of Kshs. 45,000/= from the 1st Respondent but was given 29,000/= and that he was never given the balance but he has so far repaid the 1st Respondent Kshs. 36,000/=. He told the Court that he did not have a direct contact with Mr. Wafula and that it was the 1st Respondent that breached the contract.
 19. PW2 was Simon Emodo, who testified that he is an animal attendant and that he knew PW1. According to him, PW1 wanted to rear exotic dairy cattle in 1988 and that he took him for a diary farm training so that he could manage his diary farm. He produced a certificate of training in Court as PEX.29. He stated that PW1 informed the 1st Respondent about his training as it was to give the Plaintiff the dairy cattle. Together with the wife of PW1, they proceeded to the 1st Respondent and were referred to Mr. Wafula (2nd Respondent) who informed them that the cow had died. They informed the 1st Respondent of this and who promised to deal with the 2nd Respondent.
 20. On cross examination, he told the Court that the 1st Respondent was to supply the dairy cows to the Plaintiff and that he was not aware if PW1 owed it or had taken a loan from it.
 21. On re-examination, he told then Court that he was not aware of what was between the 1st Respondent and the Plaintiff. At that juncture the Appellant closed his case and paving way for the Respondents' cases.
 22. DW1 was Eunice Odeyo Amwayi, who testified that she is an employee of the 1st Respondent and works as the acting Manager 1st Respondent's Bungoma branch. According to her, the 1st Respondent issued a loan to PW1 on 21st April 1987 as he had applied for Kshs. 45,000/= loan. PW1 had indicated that the loan purpose was to purchase: dairy cow at Kshs. 16,000/=; Grazing unit equipment drugs at Kshs. 10,000/=; Fodder development chaff-cutter at Kshs 8,000/= and water development and fencing at Kshs. 11,000/=. She produced the loan application form as DXH.1, the loan offer as DEXH.2, the notification of the charge as DXH.3, the charge on chattels as DEX.4, authority to incur expenditure as DEXH.5, and health certificate as DEXH.6.
 23. It was her testimony that on executing all the necessary documents, the funds amounting to Kshs. 45,000/= were released to PW1. Kshs. 16,000/= was released to the supplier of the cattle and the balance was channelled to PW1. She testified that the 1st Respondent was under no obligation to ensure that the supplier supplied the goods to the loanee/applicant and vide a letter dated 8th November 1993 addressed to the D.C Busia District by PW1, they became aware of the fact that the supplier did not supply the animals to the Plaintiff. The letter indicated that PW1 had sued Mr. Wafula, the supplier, vide a suit No. 220 of 1992 before a Kakamega Court and that the Applicant acknowledged that



- the 1st Respondent had paid the 2nd Respondent Kshs. 16,000/= for the animals. The letter dated 8th November 1993 was produced as DEXH.7.
24. She told the Court that PW1 partially serviced his loan facility and on default he was issued with a foreclosure notice dated 16th June 1998 which contained the loan balance. As at 16th June 1998 PW1 owed the 1st Respondent Kshs. 84, 318/= and that the foreclosure notice gave him a deadline namely 28th June 1998 which he was expected to pay the loan. She produced the foreclosure notice dated 16th June 1998 as DEXH.8.
25. On cross-examination, she told the Court that the animals were not supplied to PW1 and that they had already paid the supplier Kshs. 16,000/=. According to her, PW1 gave them the authority to incur the expenditure and that he never wrote a formal letter to them that he had located the supplier. The letter dated 2nd June 1989 emanated from the 1st Respondent and it was addressed to the 2nd Respondent. She told the Court that the letter dated 26th December 1989 indicated that separate agreements were done between 1st Respondent and 2nd Respondent and that the same was copied to PW1. She told the Court that the 2nd Respondent was not their agent and that the 1st Respondent never confirmed whether PW1 received the animals.
26. On cross examination by Counsel for the 3rd Party, she told the Court that she did not have an original form as acknowledgement by the 2nd Respondent that he received the Kshs. 16,000/=.
27. On re-examination, she told the Court that she became aware of the 2nd Respondent from PW1's authority of expenditure.
28. The 2nd Respondent opted not to tender evidence and closed his case at that juncture.
29. I have given due consideration to the appeal herein, the evidence before the trial Court, the grounds of appeal and the submissions by the parties in this appeal as well as the parties' submissions in the lower Court. In my humble view, I find the only issues for consideration are whether this Court should interfere with the decision of the trial Court and grant the orders sought.
30. It is trite that this is a first appeal to this Court and as provided in the well settled principles, I am obligated to rehear the dispute, but must remember that the learned trial magistrate had the advantage of hearing and seeing witnesses testify before her as that advantage is not available to this court (See *Peters v Sunday Post Limited* [1958] EA 424.)
31. The Court also in the cases of *Bundi Murube v Joseph Omkuba Nyamuro* [1982-88] 1 KAR 108 had this to say; -
- “However, a court on appeal will not normally interfere with a finding of fact by the trial court unless, it is based on no evidence or on a misapprehension of the evidence or the judge is shown demonstrably, to have acted on wrong principles in making the findings he did.”
- And also, in *Rahima Tayabb & Another v Ann Mary Kinamu* [1982-88] 1 KAR 90 Law JA also stated; -
- “An appellate court will be slow to interfere with a Judge's findings of fact based on his assessment of the credibility and demeanour of witnesses who has given evidence before him.”
32. The law on the grant of injunction in this country is fairly well settled. Conditions for grant of interlocutory injunction as laid down in *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358 are as follows:



- (i). prima facie case with a probability of success;
 - (ii). the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages;
 - (iii). if the Court is in doubt on the existence or otherwise of a prima facie case it will decide the application on the balance of convenience.
33. With respect to what constitutes a prima facie case, in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125, it was held by the Court of Appeal (Bosire, JA) that:

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience...A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “prima facie” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “prima facie” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of a prima facie case, the former being the lesser standard of the two...In civil cases a prima facie case is 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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard, which is higher than an arguable case.”

34. On this sole important issue, the law is clear that he who alleges must prove. The term burden of proof draws from the Latin phrase “Onus Probandi” and when we talk of burden we sometimes talk of onus.
35. Burden of proof is used to mean an obligation to adduce evidence of a fact. According to Phipson on the *Law of Evidence*, the term ‘burden of proof’ has two distinct meanings:
- 1. Obligation on a party to convince the tribunal on a fact; here we are talking of the obligation of a party to persuade a tribunal to come into one’s way of thinking. The persuasion would be to get the tribunal to believe whatever proposition the party is making. That proposition of fact has to be a fact in issue. One that will be critical to the party with the obligation. The penalty that one suffers if they fail to prove their burden of proof is that they will fail, they will not get whatever judgment they require and if the plaintiff they will not sustain a conviction or claim and if defendant no relief. There will be a burden to persuade on each fact and maybe the matter that you failed to persuade on is not critical to the whole matter so you can still win.



2. The obligation to adduce sufficient evidence of a particular fact. The reason that one seeks to adduce sufficient evidence of a fact is to justify a finding of a particular matter. This is the evidential burden of proof. The person that will have the legal burden of proof will almost always have the burden of adducing evidence.
36. Section 107 of *Evidence Act* defines burden of proof as– of essence the burden of proof is proving the matter in Court. Subsection (2) Refers to the legal burden of proof.
37. Section 109 of the *Evidence Act* exemplifies the Rule in Section 107 on proof of a particular fact. It is to the effect that the burden of proof as to any particular fact lies on the person who wishes to rely on its existence. Whoever has the obligation to convince the Court is the person said to bear the burden of proof. Thus, if one does not discharge the burden of proof then one will not succeed in as far as that fact is concerned.
38. The question therefore is whether the Appellant herein discharged the burden of proof that he discharged his obligation under the loan agreement dated 4th May 1987 by paying back the loan facility.
39. The remedy being an equitable one, the Court will decline to exercise its discretion if the supplicant to relief is shown to be guilty of conduct which does not meet the approval of the Court of equity. Where the contract is frustrated by the actions of a third party, it cannot be said that a prima facie has been made. It is for the supplicant to injunctive relief to demonstrate that he would suffer loss, which cannot be adequately compensated in damages.
40. I have considered the respective parties' arguments in this appeal. There is no denial that the Appellant applied for a loan from the 1st Respondent herein vide a loan agreement dated 4th May 1987 which was produced as PEXH.1 and that the same was disbursed as follows: Kshs. 29,000/= to the Appellant and Ksh. 16,000/= to the 2nd Respondent herein. It is also not in contention that the 2nd Respondent was in receipt of the Kshs. 16,000/= for the sole purpose of supplying the Appellant with four dairy cows.
41. It is clear that the 1st Respondent released Kshs. 16,000/= to the 2nd Respondent herein for purchase of the four dairy cows but who failed to fulfill his obligation. According to DW1 vide a letter dated 26th December 1989, she established that separate arrangements were made between the 1st and 2nd Respondent to supply the Appellant with the four dairy cows. Courtesy of this, I agree with the holding by the trial Court that the 2nd Respondent had a duty to repay Kshs. 16,000/= to the 1st Respondent who did not supply the animals as it was expected of him.
42. Subject to the letter dated 26th December 1989, it is clear that the 2nd Respondent owed some obligation to the 1st Respondent and based on the evidence on record funds were released to the 2nd Respondent in good faith with the impression that he would supply the animals. I concur with the finding of the trial Court that the 2nd Respondent herein is obligated to refund the 1st Respondent herein the Kshs. 16,000/= plus interest.
43. On whether the loan facility of the Appellant was fully repaid by him to warrant the prayers for a discharge from the contract, vide a foreclosure notice, dated 16th June 1998, the 1st Respondent notified the Appellant that as of 16th June 1998 his loan arrears stood at Kshs. 84, 318/=. From my inspection of the document, it is elaborate that the principal amount used to calculate the loan arrears as of 16th June 1998 was Kshs. 45,000/= which was not the case as the Appellant only received Kshs. 29,000/= out of the borrowed Kshs. 45,000/=. This was rightly pointed out by the trial court.
44. Having upheld the decision of the trial Court, it is clear that the 2nd Respondent is expected to handle the repayment of Kshs. 16, 000/= plus interest. This simply means that the proper principal amounts



the 1st Respondent ought to use to determine his loan arrears is Kshs. 29,000/=. The 1st Respondent purported to have obtained an order to incur expenditure on the Kshs 16, 000/ from the Appellant regarding the purchase of the dairy cows from the 2nd Respondent and this is the amount that the 1st Respondent wants to avoid and then pin it on the Appellant. I find that this is unconscionable as the Appellant had sought for a loan of Kshs 45, 000/ but was given Kshs 29,000/. Hence, I find that the 1st Respondent ought to calculate the loan arrears from the Appellant based on the sums advanced to him and then recover the other from the 2nd Respondent. Whereas the Appellant ought not to be discharged at this stage until the actual amounts due are established, I find that he is entitled to an order for injunction pending the establishment of the exact amounts due to the 1st Respondent.

45. Bearing in mind the Appellant paid Kshs. 36,000/= it is imperative that the 1st Respondent makes the requisite. computation with the Principal amount of Kshs. 29,000/= to enable the Appellant know how much he has in arrears. This simply means that I concur with the holding of the trial Court that the Appellant's loan facility with the 1st Respondent cannot be termed as fully cleared and thus this Court cannot issue the order of his discharge from the contract at this stage.
46. From the foregoing discourse, it is clear to me that that the Appellant has established that, the 1st and 2nd Respondent by either their actions or inactions possibly committed an infringement of the agreement between the Appellant and the 1st Respondent. It is therefore my view that the Appellant had established a prima facie case with probability of success before the trial court regarding his quest for orders of injunction to preserve the suit properties from being auctioned before the actual amount due was established.
47. The next issue is on whether the Appellant had proved that he stands to suffer irreparable injury, which would not adequately be compensated by an award of damages. The general position is that an injunction ought not to be granted if the applicants may be compensated by an award of damages. However, as was held in *Muigai vs. Housing Finance Co. Ltd & Another* HCCC No. 1678 of 2001, it is not an inexorable rule of law that where damages may be an appropriate remedy, an interlocutory injunction should never issue. In this case, it is clear that the Appellant has suffered mental anguish with the axe of sale of his property by the 1st Respondent to recover the loan arrears. He is apprehensive that the effect of the actions of the 1st Respondent will have them recover a loan of Kshs. 16,000 plus interest yet he was not in receipt of the same but was only advanced Kshs. 29,000/=. Also, the sale of his properties S. Teso/Apokor/1254 and S. Teso/Amukura/1189 over a loan that he barely has a proper track on with regard to how much he is owing after the payment of the initial Kshs. 36,000/= will definitely ruin him.
48. Even if I was in doubt as regards the foregoing, it is my view that the balance of convenience tilts in favour of preserving the status quo during the pendency of the exact status of the Appellant's loan account with the 1st Respondent. Indeed, the trial court in its judgement appears to have given conflicting findings in that whereas it granted the order for injunction, it did not discharge the appellant from liability to the 1st Respondent and hence this appeal. It is to that extent that I find that the appellant's appeal succeeds. This court will then proceed to issue the appropriate orders.
49. In the result, it is my finding that the appellant's appeal has succeeded partly. The trial court's judgement dated 14/6/2013 is hereby set aside and substituted with the following orders:
 - a. An order compelling the 1st Respondent to prepare and avail a comprehensive files computing the loan arrears the Appellant owes with a principal sum of Kshs. 29,000/=.
 - b. An order compelling the 1st Respondent to convene a meeting with the Appellant and his Advocate with a view to a repayment module of the loan arrears.



- c. An order compelling the 2nd Respondent to refund the sum of Kshs. 16,000/= plus interest to the 1st Respondent within 30 days from the date of this Judgement.
- d. An order of injunction is hereby granted restraining the 1st Respondent by itself, its servants or otherwise from auctioning the Appellant's parcels of land namely LR Numbers South Teso/ Amukura/1189 and South Teso/Amukura/ 1254 pending settlement of the loan arrears by the 1st Respondent as per paragraphs (a) and (b) above.
- e. Each party shall bear their costs of this appeal while the Appellant will have costs in the lower court.

DATED AND DELIVERED AT BUNGOMA THIS 28TH DAY OF JULY 2023.

D.KEMEI

JUDGE

In the presence of:

No appearance for Appellant

Shikha for 1st Respondent

No appearance for 2nd Respondent

Kizito Court Assistant

