



**Key Microfinance Bank PLC v Wachira (Civil Appeal E073 of 2021)
[2022] KEHC 391 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E073 OF 2021
TW CHERERE, J
APRIL 28, 2022**

BETWEEN

KEY MICROFINANCE BANK PLC APPELLANT

AND

LUCY WANGUI WACHIRA RESPONDENT

*(Being an appeal from the Ruling and Order in MAUA CMCC
NO. 105 OF 2019 by Hon. T. GESORA (CM) on 20th May 2021)*

JUDGMENT

1. By a letter of offer dated 01st November, 2018, the Appellant advanced the Respondent a loan of Kshs. 5,796,450/- payable in 60 equal monthly instalments of Kshs. 137, 897/-. It was a term of the agreement that the loan was to attract an interest rate of 1.25% per month calculated on a reducing balance rate payable monthly in arrears together with the principal monthly instalments. In case of default, the arrears were to attract a default interest at 1% per month. Several demand letters from the Appellant appear to suggest that Respondent fell in arrears.
2. Following the Appellant's demand for repayment and notice to the Respondent that Appellant was required to share information of her default with other financial institutions through Credit Reference Bureau (CRB), Respondent by a plaint dated and filed on 01st August, 2019 in Maua CMCC No. 105 of 2019 sought orders as follows:
 - a. A declaration that the increased monthly instalments that the defendant has charged the plaintiff herein are unconscionable, illegal, null and void
 - b. A declaration that the defendant acted in breach of the terms of loan offer
 - c. An order to the effect that the plaintiff be paying the defendant Kshs. 137, 897/- in 60 monthly instalments as per the contractual terms



3. While Maua CMCC No. 105 of 2019 was still pending, Respondent by a plaint dated 21st January, 2020 filed on 06th April, 2021 filed Maua CMCC No. 15 of 2020 challenging her listing with CRB and seeking the following orders:
 - a. General damages for subjecting the plaintiff to humiliation, ridicule, financial meltdown and crippling of the plaintiff source of income.
 - b. Special damages of the lost income where the plaintiff was earning Kshs. 20,000 a day from 16th December 2019 to 22nd January 2020 since she has been out of business up to now.
 - c. An order barring the defendant from listing the plaintiff with CRB unless the plaintiff reneged on the repaying, completely the loan advanced to her by the defendant
 - d. Costs of the suit and interest thereon.
4. Subsequently by an application dated 30th March 2021, The Appellant sought consolidation of Maua CMCC No. 15 of 2020 and CMCC No. 105 OF 2019 mainly on the ground that both are between the same parties, arise from the same transaction being a loan advanced to the Respondent by the Appellant vide a letter of offer dated 01st November, 2018 and share common questions of law and fact.
5. By a ruling dated 20th May, 2021, the application for consolidation of the suits was dismissed on the grounds that although both are between the same parties and arise from the same transaction, the nature of the reliefs sought in the 2 cases is different and each can be resolved without affecting the other.

Appeal

6. Dissatisfied with the trial magistrate's ruling, Appellant filed the memorandum of appeal dated 5th June 2021 raising three (3) grounds as follows:
 - i. That the learned magistrate erred in law and in fact by failing to appreciate that the engagement between the Appellant and the Respondent was Bank-Client relationship pursuant to a letter of offer dated 01/11/2018 and therefore both Maua No. 15 of 2020 and Maua CMCC No. 105 of 2019 arise from a common cause of action.
 - ii. That the learned magistrate erred in law and in fact by completely misinterpreting and misapplied the concept and principles of consolidation of suits thus arriving at an erroneous decision.
 - iii. The learned magistrate totally misdirected himself by importing extraneous and illogical holding that the two suits subject of the Appeal could proceed independently without risk of varying and/or contradictory findings and/or affecting each other.
7. The appeal was canvassed by way of written submissions. The Appellant contends that there is a direct linkage between the 2 suits as they revolve around the terms of letter of offer in which one transaction led to the other and therefore the desirability of consolidation. It was submitted that both suits are inextricably intertwined and there is a possibility of the court giving conflicting decisions that will bring the administration of justice to disrepute. The court was urged to allow the appeal to avoid multiplicity of suits and to uphold the overriding objectives in the *Civil Procedure Act* to provide just, expeditious, proportionate and affordable disposal of cases. It is the Appellant's case that no party will suffer prejudice if the two matters were consolidated. Reliance was placed on *Nyati Security Guards & Services v Municipal Council of Mombasa* [2000] eKLR, *Kimani Waweru & 28 others v Law Society*



of Kenya & 12 others [2014] eKLR, *Ethics & Anti-Corruption Commission v Charles Nderitu Muitai & 13 others* [2021] eKLR, *Benson G. Mutahi V Raphael Munene Kabutu & 4 others* [2014] eKLR.

8. Respondent urged the court to dismiss the appeal on the ground that consolidation will prejudice the Respondent by merging of different issues which will result in a case marred with hitches thus delaying the trial, requiring the Respondent to amend her pleadings and consequently affect her right to a fair hearing and access to justice. Reliance was placed on *Eunice Nayirungu v Libey Njoki Munene & 2 Others* [2015] eKLR, *Fabian Esemai & Another v Priscilla Jeserek Telieny* [2021] eKLR, *Idow Trading Company Company Limited v Mohammad Jimale & 2 Others* [2021] eKLR.
9. I have considered the appeal in the light of the court record, the grounds of appeal, submissions and authorities cited for both parties.
10. In *Nyati Security Guards & Services ltd -vs- Municipal Council of Mombasa (Supra)*, the Court set out the principles that consolidation of suits as follows:
 - “.....the situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:
 - a) Some common question of law or fact arises in both or all of them; or
 - b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
 - c) For some other reason it is desirable to make an order for consolidating them.”
11. From a perusal of Maua CMCC No.15 of 2020 and CMCC No.105 of 2019, there is no denying the fact that they both arise from the same transaction being the letter of offer dated 01st November, 2018. Ultimately the main issue for determination would be the terms of the offer letter, whether the same was breached or not and whether the Appellant’s resultant actions were justified.
12. In the circumstances, I find that it would serve the interests of justice to consolidate the two suits so that the issues can be dealt with simultaneously thus affording the parties a just, expeditious, proportionate and affordable resolution of the dispute.
13. I have considered the Respondent’s contention that she might eventually be required to amend her pleadings thus denying her the right to a fair hearing and access to justice but I find that in the circumstances of this case, an amendment if sought and allowed will afford the court the opportunity to make a just determination of the controversy between the parties’ and none of the parties will be prejudiced.
14. In the end and for the reasons given on the foregoing analysis, I have come to the conclusion that this appeal has merit and it is allowed in the following terms:
 1. The ruling and order dated 20th May 2021 dismissing the application dated 30th March 2021 seeking an order for consolidation of Maua CMCC No. 105 of 2019 and Maua CMCC No. 15 of 2020 is hereby set aside and is substituted with an order allowing consolidation of the two suits
 2. The suit/s shall be heard by any other magistrate other than Hon. T. Gesora (CM)
 3. Respondent shall bear the costs of this appeal.

DATED AT MERU THIS 28TH DAY OF APRIL 2022



T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Mr. Maheli for M/s Wambugu & Muriuki Advocates

For Respondent - Munene Kirimi for M/s Munene Kirimi & Co. Advocates

