



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO.437 OF 2006

CHARLES KAGEMA MURAYA.....PLAINTIFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

JUDGMENT

1. **Charles Kagema Muraya, (the Plaintiff)**, was a shareholder of **Equity Building Society (Building Society)** the predecessor of **Equity Bank Limited (the Defendant)**. The Plaintiff held **7,500** shares in the Building Society and was issued with an **Investment Share Certificate No. 791** for those shares.

2. The Plaintiff's claim is against the Defendant. The Plaintiff seeks for an order that the Defendant do issue him with Share Certificate for **150,000** ordinary shares in **Equity Bank Limited**; for an order that the Plaintiff's name be included in the register of shareholders of Equity Bank Limited; and for an order that the Defendant do pay the Plaintiff total amount of unpaid dividends.

3. The Defendant by its defence does not deny that the Plaintiff was a shareholder of the Building Society, holding **7,500** shares.

4. The Defendant however contends in the defence that pursuant to the Building Society Rule dated **23rd November 2004**, it held a lien over the Plaintiff's 7,500 shares. That in exercise of that lien it sold the plaintiff's said shares in order to offset the Plaintiff's outstanding loan it had with the Building Society. That the sale which took place on **23rd December 2004**, yielded **Kshs 1,500,000** which amount was deposited in the Plaintiff's account with the Building Society which reduced the Plaintiff's indebtedness with the Building Society to **Kshs 7,565,553.05**.

ISSUES

5. Although the parties identified 13 issues for determination in this case, having considered the pleadings, the evidence and the parties' submissions I am of the view that 3 issues will be adequate to determine this matter. Those issues are:

a) Was the Defendant entitled to sell the Plaintiff's shares;

b) If not what orders should the Court make;

c) Who will bear the costs?

ANALYSIS AND DETERMINATION

6. As stated before the Plaintiff held 7,500 shares with the Building Society.

7. The Plaintiff does not deny that he was indebted to the Building Society and states that he has not fully paid that debt because he has dispute over the exact amount due.

8. The Building Society sold the Plaintiff's 7,500 shares in exercise of its lien in order to offset the Plaintiff's debt. The Building Society relied on Clause 14 of its Rules which Provides:-

"The Society in respect of any mortgage or guarantee by any person in its favour shall have first and paramount lien upon all moneys in respect of Investment Shares standing to the credit of such person as an Investment Member and the Society in respect

of any sums due under such mortgage or guarantee and remaining unpaid may at any time appropriate and use any such money for the credit and in reduction of the mortgage or guaranteed account and thereafter no interest, dividend or bonus shall be payable on any money so appropriated.”

9. The answer to the issue (a) above will be answered by the definition of the word lien.

10. The Oxford Advanced learners Dictionary **7th Edition** defined lien as :-

“The right to keep somebody’s property until a debt is paid”

11. The Blacks Law Dictionary Eighth Edition defines lien as:-

“A legal right or interest that a creditor has in another’s property, lasting usually until the debt or duty that it secures is satisfied.”

12. Those two definitions clearly shows that a lien allows someone to keep property until the debt they are owed is paid. A lien does not permit a person to sell the property upon which they hold a lien. Not at all.

13. It follows that the Building Society and by extension the Defendant had no right in law to sell, in **November 2004**, the Plaintiff’s 7,500 shares in the Building Society. Such a sale, as correctly pleaded by the Plaintiff was fraudulent and unlawful.

14. It follows that in response issue (a) the finding of this Court is that the Defendant was not entitled to sell the Plaintiff’s 7,500 shares in the Building Society.

15. Having made that finding what then should be the orders of this Court.

16. The Plaintiff pleaded, and it was not denied by the Defendant that not only was he entitled to the 7,500 shares wrongly sold but that he was entitled to the bonus shares which the Building Society made to investing members in the year **2002/03** and to the four ordinary bonus shares the Defendant made for each ordinary shares held. In total the Plaintiff pleaded that he was entitled to **150,000** ordinary shares in the Defendant Bank.

17. This claim by the Plaintiff was not denied by the Defendant but the Defendant’s witness **Ambrose Ngari** stated in evidence that the Plaintiff was not entitled to the bonus shares because his 7,500 shares in the Building Society were sold in **December 2004** to pay the debt the Plaintiff owed the Defendant.

18. As stated before the Defendant had no legal basis of selling the Plaintiff’s shares. It is pertinent to state that even if the Defendant had a right to sell the Plaintiff’s shares the Defendant did not prove to the required standard that indeed such a sale took place. There was no documentary evidence of such sale other than a credit entry into the Plaintiff’s account.

19. The Plaintiff however, since there was no denial of bonus shares being issued to investors, has proved his entitlement to 150,000 ordinary shares in the Defendant Bank.

20. Although the Plaintiff prayed for an order for payment of unpaid dividends of those 150,000 ordinary shares the Plaintiff did not prove on a balance of probability what those dividends were, at all. That claim therefore fails.

21. The Plaintiff having substantially succeeded in his claim is entitled to the costs of this suit.

22. In the end I grant Judgment for the Plaintiff against the Defendant as follows;

a) Equity Bank Limited shall issue Charles Kagema Muraya share certificate for 150,000 ordinary shares in Equity Bank Limited;

b) The name of Chales Kagema Muraya shall within 30 days from today be included in the register of shareholders of Equity Bank limited and that register shall reflect the shareholding of Charles Kagema Muraya as a holder of 150,000 ordinary shares in Equity Bank Limited;

c) The costs of the suit are awarded to Charles Kagema Muraya

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 2018.

MARY KASANGO

JUDGE

Judgment read and delivered in open court in the presence of:

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant

MARY KASANGO

JUDGE