



**Maveke & another v Unity Micro Investment Ltd & another (Environment & Land Case E012 of 2022) [2022] KEELC 3388 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3388 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E012 OF 2022**

**M SILA, J  
JULY 20, 2022**

**BETWEEN**

**DAVID KASIVU MAVEKE ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL MASILA MUNYAO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**UNITY MICRO INVESTMENT LTD ..... 1<sup>ST</sup> DEFENDANT**

**FAMILY BANK LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This suit was commenced through a plaint filed on 4 February 2022. In the plaint, it is pleaded that the 1<sup>st</sup> plaintiff is the registered proprietor of Apartment No. 4 C within the title Mombasa/Block XI/178 in Mombasa, while the 2<sup>nd</sup> plaintiff is the registered proprietor of the land parcel LR No. 5813 (Original No. 976/33/5) Section I, Mainland North (hereinafter referred to as “the suit properties”). It is averred that the plaintiffs allowed the 1<sup>st</sup> defendant (Unity Micro Investment Limited) to use the suit properties as security for a loan offered by the 2<sup>nd</sup> defendant (Family Bank Limited). It is pleaded that the 1<sup>st</sup> defendant moved the Chief Magistrate’s Court to restrain the 2<sup>nd</sup> defendant from selling the suit properties. The plaintiffs state that the 2<sup>nd</sup> defendant issued to them a 90 day notice of their intention to sell the suit properties. In this suit, they wish to have a declaration that the 90 day notice is unlawful, a permanent injunction to stop the defendants from dealing with the suit properties, and costs.
2. The 2<sup>nd</sup> defendant has raised issue that this suit is res judicata the suits Mombasa CMCC No. 1422 of 2021 and Mombasa CMCC No. 1451 of 2021. I directed the plaintiffs to show cause why this suit should not be dismissed for being res judicata but nothing was filed to show cause, and counsel for the plaintiffs failed to appear and make any submissions on the matter.



3. Nevertheless, I have looked up at the pleadings in both Mombasa CMCC No. 1422 of 2021 and Mombasa CMCC No. 1451 of 2021. The plaintiff in the suit Mombasa CMCC NO. 1422 of 2021 is Unity Micro Investment Limited and the defendant is Family Bank Limited. In that suit, the plaintiff seeks orders to stop the sale of the Apartment No. 4C on the basis that the defendant has threatened to sell it, yet she is not in default. In the suit Mombasa CMCC No. 1451 of 2021, the plaintiff is again Unity Micro Investment Limited and the defendant is Family Bank Limited. That plaint seeks to stop the defendant from selling the property LR No. 5813 (Original NO. 976/33/5) Section I, Mainland North. The two files were consolidated through a ruling made on 28 September 2021. There was an application for injunction filed which was decided in a ruling delivered on 24 January 2022. The application was dismissed with the court noting that there is evidence of default by the plaintiff therein, who is clearly the borrower but not owner of the suit properties.
4. The plaintiffs in the matter before me are the owners of the suit properties and they have now filed this suit. From what I can see, their cause of action is based on the failure to issue the requisite statutory notice to them. It may be that the borrower's cause of action and the property owners' cause of action is different. The parties (borrower and property owners) are different and it cannot be said that one is suing on behalf of the other. I do not think that the fact that the borrower has filed suit means that the owners of the suit properties are barred from filing suit. I therefore hesitate to strike out this suit as res judicata.
5. I however order that this suit be transferred to the Chief Magistrate's Court Mombasa, and it be consolidated with the suits Mombasa CMCC No. 1422 of 2021 and Mombasa CMCC No. 1451 of 2021, for disposal. The Magistrate's Court will deal with all issues arising out of the three suits.
6. I make no orders as to costs.

**DATED AND DELIVERED THIS 20 DAY OF JULY 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT AT MOMBASA.**

