



Lenengwesi v First Community Bank Limited & another (Environment & Land Case E002 of 2023) [2025] KEELC 3083 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3083 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E002 OF 2023**

LN MBUGUA, J

APRIL 3, 2025

BETWEEN

PHILIP LOBUKU LENENGWESI PLAINTIFF

AND

FIRST COMMUNITY BANK LIMITED 1ST DEFENDANT

B GATHIRU T/A REGENT AUCTIONEERS 2ND DEFENDANT

RULING

1. Before me is a notice of motion application dated 9.4.2024 in which the defendants are seeking orders to have the suit struck out. The application is premised on grounds on the face of the application and the supporting affidavit of Claris Ogombo of even date. He contends that they advanced a loan of Ksh 25 million to Buddington Investments Limited of which the security was the two suit properties namely Laikipia/Sosian/Sosian Block 2/6833 and 6834.
2. That the borrower defaulted in paying the loan, thus the 1st defendant proceeded to exercise its statutory power of sale over the suit properties. However, the plaintiffs filed this suit on the basis of customary trust in relation to the suit land.
3. Citing the provisions of Section 103 of the *Land Act*, the defendants contend that such a suit challenging the chargees statutory power of sale can only be filed by a chargor or a joint chargor, spouse of a chargor, a lessee of a chargor or a trustee in bankruptcy proceedings against a chargor.
4. In their submissions dated 29.7.2024, the defendants reiterated the averments set out in their application adding that there was no privity of contract between them and the plaintiffs, adding that the plaintiffs are strangers to the contract entered into between the borrower and the lender. To this end, the defendants relied on the cases of; David Kamau Njoroge (Deceased) v Savings and Loan (k) ltd 2006 eklr and Agricultural Finance Corporation vs. Lengeita Limited (1985) eKLR amongst other cases.



5. The plaintiff opposed the application vide his replying affidavit dated 20.6.2024 where he contends that the application is not merited as the court had issued a preservation order on 21.9.2023. He further states that his brother was missing as at the time the statutory power of sale was being exercised.
6. In his submissions dated 26.6.2024, the plaintiff reiterated that he pleaded trust, thus he has capacity to bring this suit. He contends that the power to strike out a suit should be exercised cautiously and in the clearest of cases. To this end, the plaintiff relies on the case of *The Co-operative Merchant Bank Ltd vs. George Fredrick Wekesa (Civil Appeal no.54 of 1999) & Yaya Towers Limited vs Trade Bank Limited (in liquidation) Civil Appeal No. 35 of 2000.*
7. As rightly submitted by the plaintiff, striking out of suits is a draconian act, which may only be resorted to in plain cases. Thus, the issue for consideration is whether this is a clear case for striking out.
8. In the case of *Kamau v NCBA Bank Kenya PLC & 3 others (Environment & Land Case E020 of 2024) [2024] KEELC 4039 (KLR) (14 May 2024) (Ruling)*, the court while allowing a lender to exercise its statutory right of sale to recover outstanding amounts stated as follows;

“Section 103 of the *Land Act*, is unambiguous to the effect that an application for relief against the exercise by Chargee of any of the remedies under Section 90(3) of the *Land Act* may only be made by; a. The Chargor; b. If joint Chargors, by one or more of them on their own behalf; c. A spouse of the Chargor to the extent that the spouse was required to give consent to the creation of the charge but did not and if the Chargor has been adjudged bankrupt, the bankruptcy trustee of the estate of the Chargor”.
9. Similarly, I find no ambiguity in the wording of the provisions of Section 103 of the *Land Act*. The plaintiff does not fall in the category of persons mentioned in the aforementioned section, and there was certainly no privity of contract between him and the lending entity. His claim that the chargor was missing is neither here nor there as he still didn't have the locus to challenge the transactions between the lender and the borrower.
10. In the circumstances, I find that the application dated 9.4.2025 is merited. This suit is therefore struck out with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 3RD DAY OF APRIL 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Kirwa for the Plaintiff

Mbatai H/B for Mungai for defendant

