



First Community Bank Limited v Interland Hauliers (K) Limited & another (Civil Suit 200 of 2016) [2025] KEHC 5773 (KLR) (Commercial and Tax) (8 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5773 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 200 OF 2016**

PM MULWA, J

MAY 8, 2025

BETWEEN

FIRST COMMUNITY BANK LIMITED PLAINTIFF

AND

INTERLAND HAULIERS (K) LIMITED 1ST DEFENDANT

GENARO NZIVO 2ND DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit by way of a plaint dated 20th April 2016, seeking judgment against the Defendants for the following reliefs:
 - a. Kshs. 7,858,965.94 and USD 132,219.77, being the outstanding amount of a loan;
 - b. Default damages at 15% per annum until payment in full;
 - c. Costs of the suit.
2. It is pleaded in the plaint that at all material times, the 1st Defendant maintained a banker-customer relationship with the Plaintiff, while the 2nd Defendant was a director of the 1st Defendant. It is further averred that pursuant to this relationship, the 1st Defendant applied for and was granted a loan facility vide a letter of offer dated 8th October 2013. Subsequently, the 1st Defendant executed three further facility letters under which additional credit was extended by the Plaintiff.
3. The Plaintiff avers that the 2nd Defendant, in his capacity as director of the 1st Defendant, executed a Deed of Guarantee and Indemnity, undertaking to repay the sums advanced in the event of default. In addition, the 1st Defendant is said to have offered as security four motor vehicles: KBK 2XXJ, ZD 1XX6, ZD 1XX7 and KBJ 1XXR.



4. The Plaintiff's case is that the 1st Defendant defaulted in servicing the facilities, and as at 9th March 2016, was indebted to the Plaintiff in the sum of Kshs. 7,858,965.94 and USD 132,219.77.
5. In response, the Defendants filed a joint statement of defence dated 20th July 2018. They assert that the facilities were to be repaid from revenue generated by trucks financed under the facilities. The Defendants contend that the Plaintiff frustrated this arrangement by prematurely repossessing the trucks, resulting in substantial loss of income and eventual collapse of the transport business.
6. The Defendants further allege that the Plaintiff disposed of the repossessed motor vehicles without rendering a proper account of the sale proceeds, failed to credit the loan accounts accurately, and levied unlawful interest, thereby inflating the debt.

Plaintiff's evidence.

7. Mohammed Adan Mohammed testified as Pw1. He adopted his witness statement dated 7th March 2019 together with the list and bundle of documents dated 18th May 2016, as part of his evidence-in-chief. His evidence substantially reiterated the averments in the plaint.
8. During cross-examination by learned counsel Ms. Njoroge, Pw1 testified that Interlands Hauliers (K) Limited was advanced four financial facilities. He stated that the recommended value for the sale of two of the secured motor vehicles was approximately Kshs. 1.7 million, although he could not confirm if a valuation report was on record. He explained that the vehicles were sold in a dilapidated condition, having been advertised multiple times, and that the proceeds realized were applied to the outstanding loan balances.
9. In re-examination, Pw1 confirmed that the Defendants did not make any voluntary payments toward the loans, and that the only credits arose from the sale of repossessed vehicles.

Defence evidence.

10. Dw1, Mr. Gerano Nzivo, testified on behalf of the Defendants and adopted his filed witness statement. He confirmed that the facilities were obtained for the purpose of financing a transport business. He claimed the business initially operated successfully but was disrupted when the Plaintiff repossessed the trucks despite ongoing payments. He further alleged that the repossession caused substantial losses and that the vehicles were returned in poor condition before being repossessed again.
11. Upon cross-examination, Dw1 conceded that vehicle KAV 6X1J was not among the secured assets and admitted to defaulting on the loan repayments. He also expressed the view that the repossessed trucks were sold at an undervalue.
12. Upon closure of oral testimony, the parties filed written submissions, duly on record and have been considered by the Court.

Analysis and determination.

13. The issues for determination in this matter are as follows:
 - a. Whether the Plaintiff has established its claim against the Defendants.
 - b. Whether the Plaintiff acted in breach of any contractual obligations by repossessing and disposing of the secured motor vehicles;
 - c. Whether the Plaintiff is entitled to the reliefs sought in the plaint.



14. The fact that the Plaintiff extended credit to the 1st Defendant under various facility letters, beginning with the letter dated 8th October 2013, is not in dispute. The 2nd Defendant's execution of a Deed of Guarantee and Indemnity is similarly not contested. These facts are supported by the documents on record and confirmed in cross-examination.
15. The Court is therefore satisfied that a contractual relationship existed between the Plaintiff and the 1st Defendant, and that the 2nd Defendant bound himself as guarantor. The Defendants have admitted receipt of the facilities and default in repayment. The Plaintiff has thus proved the existence of a debt on a balance of probabilities.
16. On the second issue, the Defendants allege that the Plaintiff repossessed the trucks prematurely, thereby disrupting the intended income stream. However, Pw1's evidence, which this Court finds credible, is that repossession occurred only after default had arisen. Dw1 admitted the default and did not establish that repossession was contrary to the facility terms.
17. It is a settled principle that a lender is entitled to exercise its rights over the security upon default. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, the Court held that a court of law cannot rewrite contracts or impose obligations not agreed upon.
18. The Court finds no credible evidence to support the Defendants' claim that the Plaintiff breached the facility agreements. The burden of proof, as placed by Section 107 of the *Evidence Act*, has not been discharged by the Defendants.
19. The 2nd Defendant, having executed a Deed of Guarantee and Indemnity, is jointly and severally liable for the amounts due upon default. This principle is affirmed in *Guaranty Trust Bank (Kenya) Ltd v Jamii Bora Bank Ltd* [2017] eKLR.
20. Further, the 2nd Defendant has not shown that his guarantee was discharged, or vitiated by fraud, misrepresentation or any other legally recognized ground.
21. As to the sale of the repossessed vehicles, the Defendants have alleged that the Plaintiff sold them at an undervalue but failed to adduce any valuation reports or independent expert evidence to substantiate this claim. Mere assertions, without proof, cannot suffice to rebut the presumption of lawful sale.
22. With regard to interest, the Plaintiff claims default interest at the rate of 15% per annum, as stipulated in Clause 5 of the facility letters. The Defendants have not proved that this rate is unconscionable or unlawful. In the absence of such evidence, the Court cannot interfere with the parties' contractual bargain. In the case of *Kenya Commercial Finance Company Ltd v Ngeny & Another* [2002] 1KLR it was stated thus:

“The court will not interfere where parties have contracted on arms-length basis. However, by its equitable jurisdiction, this court will set aside any bargain which is harsh, unconscionable and oppressive or where having agreed to certain terms and conditions, thereafter imposes additional terms upon the other party. Equity can intervene to relieve that party of such conditions.”

14. Similarly, in *Shah v Guilders International Bank Ltd* [2002] 1 EA 264 (CAK) it was held that:

“...where the rate of interest [has been agreed upon by parties,] the court was obliged to enforce the agreed rate unless it was illegal, unconscionable or fraudulent.”



14. Given the foregoing, and having considered the pleadings, evidence, and submissions of counsel, the Court finds that the Plaintiff has proved its case on a balance of probabilities.
15. Accordingly, judgment is entered in favour of the Plaintiff against the Defendants jointly and severally, and the Court makes the following final orders:
 - a. The Defendants shall pay to the Plaintiff the outstanding sum of Kshs. 7,858,965.94 and USD 132,219.77, together with accrued interest thereon at the contractual default rate of 15% per annum from the date of default until payment in full;
 - b. The Plaintiff is awarded costs of the suit.
 - c. The Plaintiff shall also be entitled to interest on costs at court rates from the date of this judgment until payment in full.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

