



Rafiki Microfinance Kenya Limited v Conier Limited & 2 others (Civil Suit E003 of 2021) [2025] KEHC 6299 (KLR) (14 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL SUIT E003 OF 2021
LN MUTENDE, J
MAY 14, 2025**

BETWEEN

RAFIKI MICROFINANCE KENYA LIMITED PLAINTIFF

AND

CONIER LIMITED 1ST DEFENDANT

MKK 2ND DEFENDANT

NMR 3RD DEFENDANT

JUDGMENT

1. The Plaintiff instituted the instant suit seeking a sum of Kshs.24,320,784/- being an amount due to it in respect of loan account number XXXXXXXXXXXXX as at 3rd July, 2020, interest thereon at the rate of 21% (KBBR + 11.87%) per annum compounded monthly with effect from 13th February, 2019 until payment in full; plus costs of the suit.
2. It is pleaded that the 1st Defendant is the Plaintiff's customer operating a savings account number XXXXXXXXXXXXX and by a letter of offer dated 12th September, 2013, the Plaintiff requested for a loan facility of Kshs.9,000,000/- that was advanced. On 16th January, 2014 the 1st Defendant was advanced a further Kshs.1,000,000/-.
3. Through another offer letter dated 22nd September, 2014 an agreement was reached where the loan facility was restructured and considered making the loan facility to be Kshs.13,137,453/-. The loan was to finance construction of hostels and all business proceeds were to be channeled through the Plaintiff. However, the 1st Defendant failed to repay the loan as agreed hence the claim.
4. The Defendants filed a statement of defence denying the allegations. They denied that interest chargeable on the loan was at the rate of 21% (KBBR + 11.87%) per annum and 1.5 default interest per month. They also denied that the loan was payable on demand in full. Breach of agreement is denied.



That the inability to pay the loan was explained to the Plaintiff and arrangements agreed on the grant of more time to repay the same.

5. Further, that the Defendants deny the claim of Kshs.24,320,784/- as pleaded and the alleged interest that continues to accrue. That the interest rate of 1.5% default per month as alleged is in contravention of Section 16A of the *Banking Act*, Chapter 488(K). And argue that the interest charged on the principal amount of Kshs.13,000,000/- is illegal which clogs the Defendants' ability to redeem their property.
6. The matter came up when an interlocutory application was considered and determined. Subsequently on 24th September, 2024, the court gave directions for hearing of the matter and the Defendants were granted leave to file statements in the intervening period. However, the Defendants did not turn up despite having been notified of the matter coming up for hearing. Therefore, only the Plaintiff presented its case.
7. PW1 John Cheruiyot Langat, the Assistant Manager, Debt Recovery Unit for the Plaintiff reiterated what is pleaded. He stated that the loan was issued to the 1st Defendant whose directors are the 2nd and 3rd Defendants for purposes of constructing hostels near Laikipia University. That after being advanced Kshs.9,000,000/- they were granted an additional Kshs.1,000,000/- but they never continued with the project. They were served with a notice hence the loan being restructured.
8. That the security given could not be realized as it was dilapidated such that efforts to sell it are frustrated due to the condition of the property. Therefore, they sought an aggregate sum of Kshs.24,320,784/-.
9. It is submitted by the Plaintiff that the 1st and 2nd Defendants executed a 3rd party charge dated 9th October, 2013 where they agreed to pay the Plaintiff the secured obligations in case of default in payment and that the 2nd and 3rd Defendants executed the guarantee and indemnity wherein they agreed to make good the default on the part of the 1st Defendant, the principal debtor.
10. That parties are bound by the terms of a contract unless coercion, fraud or undue influence is pleaded and proven. Reliance is placed on *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd* [2001] 2EA 503 where the court held that;

“ A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.

As was stated by Shah JA in the case of *Fina Bank Limited vs Spares & Industries Limited (Civil Appeal No 51 of 2000)* (unreported):

“It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain”.

11. Also cited is *Pius Kimaiyo Langat v Cooperate Bank of Kenya Ltd* [2017] eKLR where the Court of Appeal held that;

“We are alive to the hallowed legal maxim that it is not the business of courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, fraud or undue influence are pleaded and proved.”



12. It is urged that since the witnesses called did not seek prayer (ii) of the plaint in his testimony they claimed the sum of Kshs.24,191,264.15/- with costs and interest from the date of judgment until payment in full.
13. This is a case that is not controverted since the Defendants failed to put forth evidence in support of their defence. It is not in doubt that the 1st Defendant was advanced a loan facility in the sum of Kshs.9,000,000/- and a further sum of Kshs.1,000,000/-. The 2nd and 3rd Defendants did sign for the facility. Subsequently, on 22nd September, 2014 the loan was restructured and the facility stood at Kshs.13,137,413/-. The facility was secured by Title Deed No. Laikipia/Nyahururu/10429, registered in the name of the 2nd Defendant which was charged to the Plaintiff.
14. Following the default, the property was seized but could not be disposed off because of the dilapidated state hence the instant legal action to recover the outstanding debt.
15. Looking at the terms and conditions set out in the letter dated 22nd September, 2014 which was in respect of restructuring of the loan facility of Kshs.13,137,463/-, the interest rate chargeable was at the rate of 21% (Kenya Bank Reference Rate + 11.87%) with rights for the Plaintiff to amend charges without notice of the Respondents.
16. Further, it is agreed that incase of default, an additional interest at the rate of 15% would be charged above the rate agreed. The Defendants did consent to the terms and conditions set. This resulted into a contract between the parties. The contract ensued because there was an offer, acceptance and subsequently consideration.

In the Pius Kimaiyo Langat case (supra) the Court of Appeal quoted RTS Flexible Systems Ltd vs Molkerei Alois Muller GmbH [2010] IWL 753 at [45], [2010] UKSC 14 where Lord Clarke stated thus;

“The general principles are not in doubt. Whether there was a binding contract between the parties and if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.”

17. The agreement between parties herein was in word and having not been challenged it stands and is affirmed. In the premises the court cannot purport to interfere with the calculation.
18. Therefore, following facts and evidence presented the case is proved on the required standard of probabilities. Therefore, judgment is entered for the Plaintiff in the sum of Kshs.24,320,784/- with costs of the suit and interest at court rates.
19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF MAY, 2025.

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L.N. MUTENDE
JUDGE

