



**Kiarie v Kanyita & another (Commercial Case E003 of 2024)
[2025] KEHC 11109 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
COMMERCIAL CASE E003 OF 2024
FN MUCHEMI, J
JULY 24, 2025**

BETWEEN

REGINA MUKAMI KIARIE PLAINTIFF

AND

JOSEPH MURIITHI KANYITA 1ST DEFENDANT

K-UNITY SACCO SOCIETY LIMITED 2ND DEFENDANT

RULING

Brief Facts

1. The application dated 30th April 2024 seeks for orders of an injunction restraining the defendants, their servants and/or agents from selling, alienating, auctioning and disposing in any way whatsoever of land parcel number LR No. Thika Municipality Block 7/163 or in any way interfering with the quiet possession of the applicant pending the hearing and determination of the suit.
2. In opposition to the application, the 2nd respondent filed a Replying Affidavit dated 14th June 2024.

The Applicant's Case.

3. The applicant avers that she is the registered owner of LR No. Thika Municipality Block 7/163 and entered into an agreement with the 1st respondent dated 10th January 2022 and 13th January 2022 where she would charge her property to the 2nd respondent to secure a loan to be advanced for a period of ninety days after which the 1st respondent would seek an alternative security and discharge her property used as security.
4. The applicant avers that the 1st respondent breached the guarantee agreement. Further, the applicant avers that she did not execute a tripartite agreement with the 2nd respondent and neither is she a party to the loan agreement between the 1st and 2nd respondents.



5. The applicant states that the loan details were kept secret and she only overheard the 1st respondent claim that he had renegotiated the loan terms with the 2nd respondent and obtained extension of timelines to pay. Further, the applicant states that when she attempted to get a loan statement, the 2nd respondent informed her that the SACCO is bound by the Data Act and cannot divulge the loan account details of the 1st respondent to a third party.
6. The applicant states that she only learnt that her property was to be sold on 2nd May 2024 by public auction in exercise of the charge statutory powers of sale through newspaper advertisement. The applicant further states that she has never been served with any statutory notices under the [Land Act](#) and the [Land Registration Act](#).
7. The applicant avers that she stands to suffer injury that cannot be compensated by way of damages if the property is sold unlawfully.

The 2nd Respondent's Case.

8. The 2nd respondent states that in October 2021, the 1st respondent approached them for a loan facility to expand his business. The applicant offered up her property being Thika Municipality Block 7/163 to secure the said loan and a charge for Kshs. 7million dated 18th January 2022 was registered against the suit property to act as security. The 1st respondent was to make monthly payments as per the charge. However the 1st respondent defaulted on the loan repayments and arrears accrued to the tune of Kshs. 4,405,240.46/- as of date.
9. The 2nd respondent states that it then chose to exercise its statutory power of sale and served the applicant and 1st respondent with a statutory notice dated 21st May 2022 informing the 1st respondent to pay all the accrued instalments within ninety days of the notice. Further, service was effected by way of registered post through the applicant's and 1st respondent's postal address i.e P.O. Box 75856-00200 Nairobi and P.O. Box 18284-00100. The 2nd respondent states that it issued a further notice on 14th September 2022. Further, Regent Auctioneers issued a 45 day redemption notice to the applicant and the 1st respondent on 28th February 2024. The same was served upon the applicant and the 1st respondent via WhatsApp as well as through registered post.
10. The 2nd respondent states that it further instructed Regent Auctioneers to conduct a valuation of the suit property. The 2nd respondent argues that it is well within its rights to exercise its statutory right of sale as the applicant has defaulted on the loan whereas the 1st respondent is the guarantor. It was further argued that the applicant freely and voluntarily provided her consent to have her property charged to secure the loan advanced to the 1st respondent.
11. The 2nd respondent states that it is not privy to any purported agreements dated 10th January 2022 and 13th January 2022 as alleged by the applicant. It was further deposed that there has been no re-negotiation or restructuring of the loan terms that have taken place initiated by the 2nd respondent and 1st respondent as alleged by the applicant.
12. Parties put in written submissions.

The Applicant's Submissions.

13. The applicant submits that the loan details were kept hidden from her by the 2nd respondent despite several enquiries citing the [Data Protection Act](#). The applicant further submits that from the loan application form the loan that was advanced was Kshs. 5 million recoverable in 60 months. The form was not shared or executed by herself which is a clear sign that she was not included, involved or



informed of the contents thereof. The loan application in part E labelled “Repayment Guarantee (Guarantors to complete)” pre-empts execution by a guarantor. But she did not sign the same. Instead the guarantee indicated is that of self against shares pledged of Kshs. 1,000,900/-. On part G of the said form on the subhead ‘Loan Appraisal’ the 2nd respondent approved a loan of Kshs. 5 million to be paid at an interest rate of 12% at a repayment amount of Kshs. 111,583/-. It was further indicated on the document that the source of income to be used for repayment was from the 1st respondent’s fish business.

14. The applicant argues that there is no binding contract between the parties as there is no offer letter presented by the 2nd respondent. Further, the applicant submits that the 2nd respondent did not exhaust all recovery mechanisms before advertising for sale her property. The applicant submits that she was not engaged or notified of the fact that since the 1st respondent was in default the security was to be sold to recover the outstanding loan.
15. The applicant submits that from the statement of accounts, the 1st respondent was in default as at April 2022 and that she was never served with the demand letter dated 21/5/2022. The said letter was sent to the 1st respondent notifying him of the default. The certificates of postage are proof of service on the 1st respondent and one Esther Wanjiru Audi. The applicant relies on the cases of *Rajnikantkhetshi Shah vs Habib Bank A.G. Zurich* [2016] eKLR and *Ndeffo Co. Ltd vs Ndegwa & 4 Others* (Civil Suit E024 of 2023) [2024] KEHC 4436 (KLR) and submits that even if she was a guarantor she was entitled to service of the demand notices and notification of default on the part of the 1st respondent. On that basis, the applicant submits that there is a prima facie case to justify the grant of an injunction. The applicant further submits that the illegal sale of her property will cause injury that cannot be compensated by way of damages and thus an injunction ought to issue.

The 2nd Defendant’s/2nd Respondent’s Submissions

16. The 2nd respondent relies on the cases of *National Bank of Kenya Ltd & 2 Others vs Sam-Con Ltd* (2003) eKLR and *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* Civil Appeal No. 39 of 2002 and submits that the 1st respondent owes an outstanding debt of Kshs. 4,405,240.46/- as at 3rd May 2024. The 2nd respondent further submits that it served the 1st respondent and applicant with the 90 day Statutory Notice dated 21st May 2022 through registered post and proof of postage was attached. The 1st respondent did not make any significant repayments between 27th February 2024 and 15th April 2024 following which the 45 day redemption notice was served on him. Thus, the 2nd respondent submits that the applicant has not demonstrated a prima facie case with a probability of success.

The 2nd respondent submits that the applicant voluntarily offered up her land as security and was aware of its right to exercise statutory power of sale should the 1st respondent default on the loan repayments. Relying on the cases of *Kitur vs Standard Chartered Bank & 2 Others* (2002) eKLR and *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* (2018) eKLR, the 2nd respondent submits that the applicant will be adequately compensated by way of damages in the event she suffers loss.

17. On the issue of balance of convenience, the 2nd respondent refers to the case of *Andrew Muriuki Wanjohi vs Equity Building Society & 2 Others* (2006) eKLR and submits that the value of the debt will soon outstrip the value of the property and it will not be able to recover the sum owed even with the sale of the property.

Issue for determination



- a. The main issue for determination is whether the court has jurisdiction to hear and determine the application and this case.

The Law

Whether the court has jurisdiction to hear and determine the application.

18. The law on the question of jurisdiction was enunciated in the case of *Owners of the Motor Vessel "Lilian S" vs Caltex Kenya Limited* [1989] KLR 1 where the court held:-

Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

19. In the case of *Samuel Kamau Macharia vs KCB & 2 Others*, Civil Application No. 2 of 2011, it was stated:-

“A court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

20. The loan application shows that the 1st respondent is a bona fide member of the 2nd respondent which is a Sacco Society. He took out a loan of a sum of Kshs. 5 million as can be discerned through Section E labelled Repayment Guarantee (Guarantors to complete) whereby the 1st respondent has indicated that in the event of default, he will offset the same through his shares worth Kshs. 1,00,900/- in the said Sacco society.

21. On further perusal, the applicant secured the loan amount by charging her property LR. No. Thika Municipality Block 7/163 which charge was registered on 18th January 2022 at the Ministry of Lands, Thika Office. It is further not disputed that the dispute has arisen due to failure to repay a loan that the 1st respondent took from the 2nd respondent, a Co-operative society which is registered and operates pursuant to the provisions of the *Co-operative Societies Act*.

22. Section 76 of the Cooperative *Societies Act* provides as follows:-

If any dispute concerning the business of a co-operative society arises-

- a. among members, past members and persons claiming through members, past members and deceased members; or
- b. between members, past members or deceased members, and the society, its committee or any officer of the society; or
- c. between the society and any other co-operative society, it shall be referred to the Tribunal.

A dispute for the purpose of this section shall include:-

- a. A claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or



- b. A claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society whether such debt or demand is admitted or not;
- c. A claim by a sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

23. In *Robert Gathigani vs John Mutual Manda* [2020] eKLR the court held:-

The plaint clearly reflects that the plaintiff's case is based on a Sacco loan at a time when both the plaintiff and the defendant have pleaded to have been members of the sacco. The defendant was sued as the one advanced the loan wherein the plaintiff is reflected as one of the guarantors. The plaintiff further pleaded that upon default in the repayment of the loan, the sum of Kshs. 410,027.37/- was deducted from his sacco account. It is therefore evident that the dispute herein involves a sacco loan and in my view falls within the business of the society and therefore falls within the ambit of Section 76 of the Sacco Societies.

24. Similarly in *Joyce Muthoni Njoroge & 2 Others vs Joshue Gachie & Another* [2021] eKLR the court held as follows:-

The applicant indeed invoked Sections 76 and 77 of the *Co-operative Societies Act*. Section 76 on settlement of disputes which provides:-

If any dispute concerning the business of a co-operative society arises-

- a. among members, past members and persons claiming through members, past members and deceased members; or
- b. between members, past members or deceased members, and the society, its committee or any officer of the society; or
- c. between the society and any other co-operative society, it shall be referred to the tribunal.

The provision is a mandatory provision that obligates members of co-operative societies to resolve their disputes through that forum and no other.

By Section 75(5) of that *Act*, that Tribunal has unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes. Further, recourse during proceedings or in respect of orders and awards of the Tribunal can only be appealed to the High Court.

25. Notably, the applicant is not a member of the 2nd respondent but she falls under the category persons claiming through a member pursuant to Section 76(a) of the *Act*. It is noted that the outstanding loan is currently Kshs. 7 million which is within the pecuniary jurisdiction of the Co-operative Tribunal. Entertaining this matter to be heard in the High Court has the effect slamming the functions of quasi judicial tribunals and denying the parties herein their right of appeal in the High Court from the decision of the Cooperative Tribunal. The tribunals created the Kenyan Laws for a good reason one of them being preventing clogging the courts and expanding the arena of justice in the first instance.

26. It is also noted that the outstanding loan owed by the 1st respondent is about Kshs.7,000,000/= which is far below the minimum pecuniary jurisdiction of this court. Even if this matter was to be filed in court, it would have been filed in the Chief Magistrates Court and not the High Court.

27. Consequently, I declare that this matter falls under the jurisdiction of the Cooperative Tribunal in the first instance. The matter is hereby struck out for the plaintiff to file it in the right forum.



28. The respondent did not raise a preliminary objection in regard to jurisdiction as would have been expected. For this reason, each party shall meet their own costs of this application.
29. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

