



**Ngatu (Suing as the Legal Representative of the Estate of Geoffrey Paul
Ngatu alias Geoffrey Ngatu) v Family Bank Limited (Civil Suit E079 of 2023)
[2025] KEHC 12593 (KLR) (Commercial and Tax) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E079 OF 2023
H NAMISI, J
SEPTEMBER 16, 2025**

BETWEEN

**JUSTER KARIMI NGATU (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF GEOFFREY PAUL NGATU ALIAS GEOFFREY
NGATU) PLAINTIFF**

AND

FAMILY BANK LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff has instituted this suit in her capacity as the legal representative of the estate of Geoffrey Paul Ngatu (Deceased). By Plaint dated 28 February 2023, the Plaintiff seeks the following reliefs:
 - i. A declaration that the Defendant was negligent, in breach of the loan facility contract dated 24 February 2020 and culpable of fraud having assessed and deducted insurance premiums from the deceased Borrower a sum of Kshs 106,534.25 on 28 February 2020 towards Group Creditor Insurance in respect of the Borrower and a comprehensive insurance over the property or assets financed by the Defendant but failed to take up and remit the premiums to insurance consequently failing to cover events of default of the loan caused by the Borrower's demise during the insurance period and, therefore, the Defendant is liable for the losses or the debt on the loan arising from the demise of the Borrower on 29 November 2023 and obligated to discharge securities in land parcels known as LR No. Kajiado/Kaputiei-North/13240, 13241, 13242 and 13243 and deliver the titles thereto to the Plaintiff free of any encumbrances;
 - ii. A declaration that the deceased Borrower fulfilled his obligations to ensure that the loan facility to him under the Loan Facility Contract dated 24 February 2020 between the said deceased Borrower and the Defendant was insured under Group Creditor Insurance in respect of the



Borrower and Comprehensive Insurance in respect of the assets financed by the Defendant on 28 February 2020 and upon demise of the deceased on 29 November 2020 thereby causing default in repayment of the loan and notification of the said demise by the Plaintiff to the Defendant in December 2020, the Plaintiff and the deceased estate stood discharged from the loan facility obligations hereof as the insurance cover ought to and is presumed to have cover/compensated the event of default.

- iii. In the alternative to (ii) above,
 - a. Special damages in the sum of Kshs 5,726,314.77;
 - b. General Damages for fraud, negligence and breach of contract;
 - c. Interest at the rate of 6% per month on (a) above from 9 February 2022 until payment in full;
 - iv. An order of permanent injunction to restrain the Defendant whether by itself or by its servants from realising the security in the land parcels known as LR No. Kajiado/Kaputiei-North/13240, 13241, 13242 and 13243 pursuant to a debt arising from Loan Facility Contract dated 24 February 2020 between the said deceased Borrower herein and the Defendant and or charges arising therefrom;
 - v. An order directing the Defendant whether by itself or by its servants to forthwith discharge securities in land parcels known as LR No. Kajiado/Kaputiei-North/13240, 13241, 13242 and 13243 and deliver documents of title thereto the Plaintiff free from any encumbrances;
 - vi. Costs of this suit.
2. Needless to say, the drafting above leaves a lot to be desired. It is a wonder that this Court is able to make head or tail of what the Plaintiff seeks.
 3. The undisputed facts are that on or about 7 February 2020, Geoffrey Paul Ngatu (the deceased Borrower) entered into a loan agreement with the Defendant, whereupon the deceased Borrower was advanced a facility of Kshs 7,000,000 as a business loan. The terms of the facility, including the repayment schedule, interest rate and term, were captured in a Letter of Offer executed by both parties.
 4. One of the terms of the loan facility was that the Defendant in its discretion would require the deceased Borrower to take a Group Creditor Insurance cover over his person and a Comprehensive Insurance Cover over the property or assets to be financed by the Defendant, and in the event of default, the Defendant would pay such premium on behalf of the deceased Borrower and the deceased Borrower would reimburse the Defendant either directly or by debiting the amount into his account.
 5. The loan facility was secured by the deceased Borrower's four (4) assets, being LR No. Kajiado/Kaputiei-North/13240, 13241, 13242 and 13243, all valued at approximately Kshs 16.5 million. The deceased Borrower duly executed the Charge instruments and delivered the original titles to the Defendant for purposes of registration of the charges. On 28 February 2020, a sum of Kshs 106,534.25 was deducted from the deceased Borrower's account towards payment of the insurance premiums for the two covers. On the same day, the sum of Kshs 7 million was disbursed to the deceased Borrower, the deceased Borrower having met all the requirements of the Defendant.
 6. Regrettably, the deceased Borrower passed away on 29 November 2020. The Plaintiff notified the Defendant of his passing and requested that the credit life insurance policy be activated to liquidate the outstanding loan balance.



7. In a turn of events that precipitated this suit, the Defendant, vide email correspondence dated 16 January 2023 and 9 February 2023, demanded a payment of Kshs 5,504,194.36 and Kshs 5,726,314.77, respectively, which sum was allegedly outstanding as at the said dates, and accruing late penalty interest at the rate of 6% per month on account of default. The Defendant's position was that no valid insurance policy was in force at the time of the deceased Borrower's demise. It contended that while premiums were indeed deducted, the policy was never formally incepted by an underwrite, alleging that the deceased Borrower had failed to furnish certain requisite medical documentation. It is as a result of this repudiation that the Defendant issued a formal demand to the Plaintiff for the settlement of the entire outstanding loan amount, threatening to institute recovery proceedings against the estate.

The Plaintiff's Case

8. PW1, the Plaintiff, adopted her Witness Statement dated 28 February 2023. She stated that the deceased Borrower, her late husband, had given her assurance that the loan was secure and insured against death. The Plaintiff produced a bundle of documents which included certified copies of the deceased Borrower's bank statements to substantiate the regular loan repayments. The Plaintiff was firm in her testimony that at no time, following her husband's passing, did the Defendant ever communicate to her, either verbally or in writing, that the insurance cover was not active.
9. It was PW1's testimony that the deceased Borrower had faithfully made the monthly repayments until his demise. Following the demise, PW1 presented a copy of his Death Certificate to the Defendant in December 2020. However, the Defendant did not provide any information regarding the insurance cover, whether it would settle the loan or if the loan was uninsured.
10. The Plaintiff called PW2, Charles Musungu, an executive Financial Advisor. His testimony was largely irrelevant to issues at hand, save to confirm that credit life insurance is insurance taken by a financial institution to compensate for any financial loss that may arise from death or permanent total disability of a borrower. He confirmed that the exit age for insurance cover varied between 60 -75 years, depending on the underwriter and that an insurance cover may repudiate a claim on account of health of the insured. This would be prescribed in the policy document.
11. In the Reply to Defence, the Plaintiff avers that the insurance cover was not optional but a mandatory term of the contract, and the Defendant is estopped from claiming otherwise.

The Defendant's Case

12. In its Statement of Defence, the Defendant admitted lending the deceased Borrower a sum of Kshs 7 million, for purposes of consolidation of LPO and invoice facilities. The repayment sum was Kshs 236,098/= per month for a period of 36 months. The facility was secured by legal charges over properties LR No. Kajiado/Kaputiei-North/13242 and 13243.
13. It is the Defendant's case that there was no express mandatory term in the Letter of Offer dated 24 February 2020 requiring the deceased Borrower to take Group Creditor Insurance cover/policy prior to disbursement of the loan amount. The Defendant avers that Clause 18 of the letter left the taking of insurance to the reasonable discretion of the Defendant.
14. DW1, Edwin Korir Komen, adopted his witness statement dated 14 August 2023 and produced a bundle of documents marked Exhibits 1 to 5. He maintained that the role of the Bank was merely to facilitate the insurance process. DW1 testified that the insurance company declined to provide a cover due to the age of the deceased Borrower (73 years old at the time of the loan) and medical condition,



rendering the loan uninsured. He confirmed that the premium sums for the insurance were deducted by the Defendant in February 2020, and no reversal of these funds was made to the Borrower's account.

15. On cross examination, DW1 admitted that no documentary evidence of this notification or the alleged rejection from the insurance company was available on record. He maintained the deceased Borrower's failure to repay the loan facility in accordance with the terms.

Analysis & Determination

16. Having carefully considered the pleadings, the evidence and the submissions by counsel for the parties, the following issues lend themselves for determination by this Court:
 - i. Whether the deceased Borrower had discharged his obligation and consequently the loan was insured;
 - ii. Whether the Plaintiff is entitled to the reliefs sought;
 - iii. Who shall bear the costs of the suit?
17. The formation of a valid contract is governed by the principles of common law, which are codified in the *Law of Contract Act*, and includes the elements of offer, acceptance, consideration and intention to create legal relations. The Defendant's offer of a loan facility constituted a composite offer to the deceased Borrower. However, this was not merely an offer for a loan, but a package that included a risk-mitigation component.
18. The Defendant argues that the requirement to take out an insurance cover was not a pre-requisite to the disbursement of the loan, the Plaintiff's position is that it was mandatory. In its submissions, the Defendant refers Clause 18 of the Loan Facility Contract, which provides as follows:

“The Lender shall in its reasonable discretion require the Borrower to take group creditor insurance in respect of the borrower (or all or any of them) and comprehensive insurance over the property or assts financed by the Lender.

Should the Borrower fail to pay any required insurance cover, the Lender shall pay such premium on the Borrower's behalf and the Borrower shall reimburse the Lender the funds failure to which the Borrower hereby authorises the Lender to debit its account with the premium amount.

The Borrower shall notify the Lender of any event which may give rise to the claim under any insurance cover taken in relation to this facility.

All proceeds received by the lender in respect of any claim made under any insurance cover will be applied by the Lender in repayment of the loan together with interest and all costs and expenses payable under this Agreement. Any surplus after such application will be credited to the Borrower's savings/current account.”

19. The Defendant's entire defence rests on the first sentence therein, “The Lender shall in its reasonable discretion require the Borrower to take group creditor insurance”. The Defendant asserts that the words “in its reasonable discretion” imply that the condition for insurance cover was optional rather than mandatory. My reading of the phrase does not reveal whether the requirement was mandatory or optional.



20. As a general rule, the basic rule of interpretation of contracts is the ordinary or natural meaning rule applicable in statutory construction as well. The rule or principle was well captured in *Euromac International Ltd v Shandong Taikai Power Engineering Co Ltd* (2012) 93 KLR as follows;
- “. . . Contractual interpretation is in essence simply ascertaining the meaning that a contractual document would convey to a reasonable person having all the background knowledge that would have been available to the parties . . .”
21. It is not unfathomable that a reasonable person reading the phrase “The Lender shall in its reasonable discretion require the Borrower...”, would construe the same as being mandatory. (emphasis mine). In ordinary interpretation, the phrase connotes that the requirement for the insurance cover is mandatory, unless the Bank chooses to exercise its discretion and waive the same.
22. In light of the ambiguity, I have to resort to the rules of interpretation of contract. Under the contra preferentem rule, an ambiguity in contract is to be construed unfavourably to the drafter [Black’s Law Dictionary, 10th ed., p. 401].
23. Further, this clause cannot be read in isolation. Clause 10 thereof provides the conditions precedent. The clause indicates that the facility is subject to the conditions precedent being fulfilled to the satisfaction of the Lender before the loan disbursement. The conditions include:
- a. Acceptance of the facility on the terms and conditions set out in this letter;
 -
 - iv. Receipt of by the Lender of an insurance cover over [n/a with a reputable insurance company approved by the Lender with the bank’s interest noted thereon as a first loss payee;
 - (e) If an individual, receipt by the Lender of the Borrower’s life insurance policy with a reputable insurance company approved by the Lender;
 -
 - i. Written instructions authorising the bank to debit your account to renew the insurance cover upon its expiry;
24. Clause 12 thereof provides as follows, inter alia:
- The Borrower undertakes to do the following as long as the Facility shall be outstanding until settlement in full:
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- b. If an individual, insure the Borrower’s life with a reputable insurance company approved by the Lender;
25. All these provisions read together lead to the undeniable conclusion that the requirement for insurance was mandatory. The life insurance was, therefore, an integral feature of the Defendant’s offer of the loan facility. The deceased Borrower’s acceptance of this offer was signified by his execution of the loan agreement, which expressly authorised the Bank to debit his account for, among other things, insurance premiums. This act of signing constituted a clear and unequivocal acceptance of the entire package as offered.



26. The Defendant's claim that the insurer declined cover due to the deceased Borrower's age and medical condition remains unsubstantiated by any documentary evidence from the alleged insurer. While PW2 confirmed that age limits and medical conditions could lead to rejection or modified terms, the Defendant failed to demonstrate that such a rejection occurred and, more importantly, that this information was formally communicated to the deceased Borrower or that the deducted premiums were refunded.
27. It is the view of this Court that this argument by the Defendant is untenable. The agreement that is paramount to this Court is the one between the deceased Borrower and the Defendant, where the Defendant held itself out as providing an insured loan facility. It is on this basis that the Defendant took the customer's money, thus assuming the responsibility of ensuring that a valid insurance cover was in place, or failing that, to communicate the rejection promptly and refund the premiums. The Defendant's failure to provide any evidence of a valid policy, a formal rejection from the insurer or a refund of premiums leads this Court to conclude that the Defendant failed in its contractual obligation and is liable for the absence of a valid life insurance cover for the deceased Borrower's loan.
28. This situation is analogous to the *Anne N Parmena v Housing Finance Company of Kenya Limited* [2015] KECA 476 (KLR) case, in which the Court of Appeal opined thus:

“We take cognizance that the borrower is deceased and the respondent is making the assertion that no life insurance policy was taken out after the death of the borrower; the dead tell no tales and the statements by the respondent could only be controverted by the deceased who can tell no tale. It was open to the respondent when the deceased borrower was alive to inform and advise him that no life insurance policy had been taken out – this, the respondent did not do; the respondent continued holding out that an insurance policy had been taken out till the letter dated 15th November 2001, when the respondent regretted to inform the appellant that the deceased borrower Dr. Parmena was not covered under its Group Mortgage Protection (Life) Assurance Scheme.”

29. The Court of Appeal cited the case of *Mary Wambui Muturi -v- Housing Finance Company Limited Nairobi HCCC No. 346 of 2006 (2012) eKLR*, in which the facts were in *pari materia* to the facts of the *Anne N. Parmena* case (*supra*). In that case, Hon. Mutava, J stated thus:

“It is clear from the testimony of both the plaintiff and the defendant's witnesses that mortgage protection cover was a condition that had to be fulfilled alongside registration of the mortgage. Similarly, such cover was required to be in place before the first drawdown of the loan. Evidence was led by the plaintiff demonstrating that the deceased executed all the forms that he was required to sign before the sum advanced was disbursed to him. Although the defendant retorted that failure to effect the insurance cover was due to failure by the deceased to pay premiums, I take the view that it was incumbent for the defendant as a prudent mortgagee and lender to ensure that cover was put in place in terms of the mortgage protection policy as an integral part of the security documentation held. That the defendant went on to plead with the insurance company for payment of an *ex gratia* sum to settle part of the debt corroborates the view that it was the defendant's obligation to ensure that cover was in place. By pursuing that payment, the defendant in effect acknowledged the negligence on its part in ensuring that cover was in place. While therefore the defendant wishes the court to believe that the estate of the deceased was not entitled to benefit at all from the proceeds of the sum that was paid by the insurance company on account of non-payment of premiums by the deceased, I am persuaded that the said payment was wholly deserved and



indeed that the shortfall from the insured sum of Kshs.3,600,000/-ought to have been met by the bank to atone for its negligence in not placing a mortgage protection cover for the facility. For by allowing drawdown before fully securing its exposure, the bank assumed the risk posed by possible default or other events, including death, that were bound to impede performance of the facility but which could have been cushioned through insurance.”

30. Having determined the dispute over the life insurance cover, the next question is whether the deceased’s loan should be deemed fully repaid. The Plaintiff testified that the loan was regularly serviced and never fell into arrears until the deceased’s death. This assertion is supported by Plaintiff’s Exhibit 7, the Bank Statements. The Loan Statement provided by the Defendant, however, is inconsistent with the evidence by DW1. The monthly repayments are not consistent with the oral evidence tendered herein. The Statement is also inconsistent with the sums demanded by the Defendant in the correspondence dated 16 January 2023 and 9 February 2023. This statement is, therefore, unreliable to the Court for purposes of ascertaining the loan balance as at 29 December 2020 when the Plaintiff informed the Defendant of the demise of the Borrower.
31. In line with the principles in the Anna N. Parmena case, where the bank’s failure to prove the insurance policy and the utilization of collected premiums led the Court to declare the loan fully repaid, this Court finds that the deceased Borrower’s loan should similarly be deemed fully repaid. The Defendant cannot benefit from its failure to secure the insurance, for which it collected premiums, by continuing to claim the loan amount from the deceased’s estate. The deceased’s estate should not be prejudiced by the Defendant’s oversight or failure to comply with its contractual obligations regarding the insurance cover.
32. The upshot is that the Plaintiff’s suit against the Defendant is meritorious. I hereby enter judgement in favour of the Plaintiff in the following terms:
 - i. A declaration is hereby issued that the deceased Borrower had fully repaid the loan amount advanced by the Defendant;
 - ii. A mandatory order is hereby issued requiring the Defendant to discharge and surrender the title documents in respect of the charged properties, LR No. Kajiado/Kaputiei-North/13242 and 13243, to the Plaintiff herein;
 - iii. The Defendant is hereby restrained from recovering any outstanding balances from the estate of Geoffrey Paul Ngatu alias Geoffrey Ngatu (Deceased) in relation to the loan account number 069 00000 7392 held at its Ngara Branch;
 - iv. Costs of the suit

DATED AND DELIVERED AT NAIROBI THIS 16 DAY OF SEPTEMBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Plaintiff: Mr. Litoro and Kinyanjui

For Defendant: Wena

Court Assistant: Lucy Mwangi

