



Cheluget & 3 others (Suing as Administrators in the Estate of the Late Isaiah Kiplangat Arap Cheluget alias Chelugat Isaiah Arap alias Cheluget Isiah Kiplangat alias Isaiah Kiplangat Cheluget alias Isaya Kiplangat Arap Cheluget Alias Mr, I.K. Cheluget alias Isaiah K. Cheluget) v Tea Hotel Limited (Civil Suit 13 of 2018) [2024] KEHC 5856 (KLR) (23 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5856 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL SUIT 13 OF 2018**

JK SERGON, J

MAY 23, 2024

BETWEEN

RAELI CHEPKURGAT CHELUGET 1ST PLAINTIFF

JOHNSTONE KIPKOECH LANGAT 2ND PLAINTIFF

LAURENCE KIMUTAI LANGAT 3RD PLAINTIFF

KENNETH KIPYEGON LANGAT 4TH PLAINTIFF

**SUING AS ADMINISTRATORS IN THE ESTATE OF THE LATE ISAIAH
KIPLANGAT ARAP CHELUGET ALIAS CHELUGAT ISAIAH ARAP ALIAS
CHELUGET ISIAH KIPLANGAT ALIAS ISAIAH KIPLANGAT CHELUGET
ALIAS ISAYA KIPLANGAT ARAP CHELUGET ALIAS MR, I.K. CHELUGET
ALIAS ISAIAH K. CHELUGET**

AND

TEA HOTEL LIMITED DEFENDANT

JUDGMENT

1. The plaintiffs are administrators in the estate of the deceased herein pursuant to a grant of letters of administration intestate issued in Kericho High court Succession Cause No. 14 of 2017.
2. The defendant is a private limited liability company carrying on the business of a hotelier at Kericho Town within Kericho County in the Republic of Kenya.
3. The plaintiffs stated that at all material times to this suit the deceased herein was a shareholder and creditor of the defendant.



4. The plaintiffs stated that the defendants' indebtedness to the deceased accrued from friendly loans advanced to it on various dates between 2009 and 2017, at its request, to facilitate the settlement of its running expenses.
5. The plaintiffs stated that vide an agreement dated 11th March, 2017 the defendant acknowledged receipt of the sum of Kshs. 39,066,696/= being an aggregate of the principal sum of the said friendly loans advanced to it by the deceased between the year 2009 and 11th March, 2017 which would accrue interest at a rate of 19% per annum from the respective dates of advancement based on parties' agreement.
6. The plaintiffs further stated that the loans and interest accrued would be repayable within thirty six months from the date of execution of the said agreement.
7. The plaintiffs stated that it was further agreed subject to a special approval of the defendants board of directors an agreed portion of the defendant's properties comprised in L.R No. Kericho/Block 4/295 and Kericho Block 4/313 could be surrendered to the deceased in settlement of its aforestated liabilities.
8. The plaintiffs stated that the deceased made further advances amounting to at least 9,925,000/= to the defendant between 14th March, 2017 and 6th May, 2017 and 6th May, 2017, prior to his demise on 26th June, 2017 which amount is still owing and similarly continues to accrue interest at the rate of 19% per annum.
9. The plaintiffs defendant's indebtedness towards the plaintiff was acknowledged by the directors and shareholders during its special general meeting held on 29th August, 2017.
10. The plaintiffs stated that in spite of various demands, the defendant has failed to settle the said debt in blatant breach of the terms of parties' agreement.
11. The plaintiff particularised the particulars of breach of contract by the defendant in the plaint dated 15th November, 2018 as follows;
 - (i) neglecting to settle the advances made in its favour as agreed;
 - (ii) failing to cause conveyance of any part (s) of its properties comprised in LR No. Kericho /Municipality Block 4/295 and Kericho/ Municipality Block 4/313 to the deceased and/or his representatives as agreed.
12. The plaintiffs claim against the defendant is for a refund of the said sum of Kshs. 74, 202,009.45/= being accrued debt and interest thereon as of 31st October, 2018.
13. The plaintiffs stated that despite several demands and notices to institute legal proceedings having been issued; the defendant has refused and/or neglected to settle the amount owed necessitating the institution of the instant suit.
14. Therefore the plaintiff sought judgement be entered against the defendant as follows;
 - a. A declaration that the plaintiff is entitled to treat the agreement dated 11th March, 2017 as repudiated owing to the defendant's breach.
 - b. An order for refund of the sum of Kshs. 74, 202, 009.45/= owed to the plaintiffs as the deceased's personal representatives as of 31st October, 2018
 - c. Damages for breach of contract
 - d. Costs of this suit



e. Interests on (b) and (b) above.

15. The defendant was served with the plaint and failed to enter appearance and/or file a defence.
16. The plaintiffs requested for judgement against the defendant who failed to enter appearance and/or file their defence within the stipulated period.
17. The Court directed that the matter should proceed undefended.
18. Lawrence Kimutai Langat (Pw. 1) testified and stated that he instituted the instant suit alongside other administrators of the estate of Isaiah Cheluget and that he recorded a witness statement dated 15th November, 2018 and adopted it as evidence-in-chief. He stated that he filed a bundle of documents in support of his case and produced the same as PExh. 1-8. He produced a copy of the grant of representation as PExh. 9. He therefore urged this Court to enter judgement as prayed in the plaint dated 15th November, 2018.
19. At the close of the plaintiff's case, the court directed the plaintiffs to file written submissions within 14 days. At the time of writing this judgement the defendant had not complied.
20. The plaintiffs filed written submissions and contended that the defendant owed the estate of Isaiah Cheluget (deceased) a total sum of Kshs. 74, 202, 009.45/= as at October, 2018.
21. The plaintiffs submitted that there was uncontroverted evidence on substantial financial transactions made to the defendants spanning from 2009 to 2018 upon the defendant's explicit request and that the transactions were documented and compiled as documentary evidence that was produced in Court in a bundle of documents marked as PExh. 1-8.
22. The plaintiffs reiterated that the deceased did extend loans to the defendants as evidenced by the documentary evidence including but not limited to loan agreements dated 3rd August, 2016 and 11th March, 2017, defendant's own admissions vide board resolutions, an array of correspondences, receipts, bank records and RTGS transaction forms.
23. The plaintiffs reiterated that the defendants were in breach of the loan agreements dated 3rd August, 2016 and 11th March, 2017. The plaintiffs submitted that there existed valid contracts between Isaiah Cheluget (deceased) and the defendants. Furthermore, these agreements unequivocally stipulated the repayment terms for the loans advanced by the deceased thereby creating a clear contractual obligations. The plaintiffs cited the case of *Stancom Sacco Society Ltd v Alliance One Tobacco Ltd* [2018] eKLR in which the court observed that;

“To create a contract, there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly.”
24. The plaintiffs submitted that the defendants never adhered to the repayment terms of the loan agreements. The loan agreements were secured by a resolution from the defendants directors promising the transfer of specific parcels of land identified as LR No. Kericho/Block 4/295 and Kericho/Block/4/313 as collateral. The defendants failure or refusal to execute the transfer as agreed was a further breach of the contractual terms.
25. The plaintiffs therefore urged this Court to treat the loan agreements dated 3rd August, 2016 for a sum of Kshs. 21, 307,032 /= at an interest rate of 19% p.a and 11th March, 2017 for a sum of Kshs. 39,066,696/= and monthly repayment of kshs. 2,561,875.43/= PExh. 7 as repudiated.



26. The plaintiffs submitted that the defendants had expressly admitted to its indebtedness to the estate of the deceased vide a board resolution made by the defendant's directors and that owing to the defendant's admission of debt, the plaintiff's urged this Court to enter judgement on admission of guilt in accordance with Order 13 rule 2 of the Civil Procedure Rules and cited the case of Choitram v Nazari (1984) KLR in which the court stated as follows;
- “...that admissions have to be plain and obvious, as plain as pikestaff and clearly readable as they may result in judgement being entered.”
27. The plaintiffs urged this Court to consider the contractual agreements as repudiated for breach on the part of the defendants and order the defendants to pay up Kshs. 74,202,009.45/= which represents the sum owed by the defendant as of 31st October, 2018 inclusive of interest. The plaintiffs further urged this court to award damages for the breach of contract and cited the finding of the Court of Appeal in Synresins Limited v Pravin Vora t/a Vora Construction [2020] eKLR where the court upheld an award of Kshs. 5,000,000/= being damages for breach of contract.
28. I have considered the pleadings and evidence adduced by the plaintiff and the sole issue is whether the plaintiff has proven breach of contract therefore warranting the reliefs sought.
29. I have considered the fact that the defendants despite having been served with a demand letter and the plaintiff did not enter appearance or file a defence and therefore the instant suit is undefended.
30. I have considered the case of the plaintiffs at length. The plaintiffs are administrators in the estate of the deceased herein pursuant to a grant of letters of administration intestate issued in Kericho High Court Succession Cause No. 14 of 2017.
31. The deceased herein was a shareholder and creditor of the defendant. The plaintiffs stated that the defendants' indebtedness to the deceased accrued from friendly loans advanced to it on various dates between 2009 and 2017, at its request, to facilitate the settlement of its running expenses.
32. I have thoroughly studied the plaint, verifying affidavit, witness statements and the list of documents which were produced in court as a bundle of documents marked as PExh. 1- 8. In the said bundle of documents there is uncontroverted evidence on substantial financial transactions made by the deceased to the defendants spanning from 2009 to 2017 upon the defendant's explicit requests, including but not limited to the loan agreements dated 3rd August, 2016 and 11th March, 2017, defendant's own admissions vide a board resolution made on 16th December, 2016, an array of correspondences, receipts, bank records and RTGS transaction forms. There is no evidence that has been presented to this court as to whether there were any efforts on the part of the defendants to repay the friendly loans advanced to it.
33. The plaintiffs in their case against the defendant have made reference to an agreement dated 11th March, 2017 whereby the defendant acknowledged receipt of the sum of Kshs. 39,066,696/= being an aggregate of the principal sum of the said friendly loans advanced to it by the deceased between the year 2009 and 11th March, 2017 which would accrue interest at a rate of 19% per annum from the respective dates of advancement based on parties' agreement. The plaintiffs further stated that the principal amount and interest accrued would be repayable within thirty six months from the date of execution of the said agreement on monthly instalments of Kshs. 2,561,875.43/=.
34. In the said agreement, the parties further agreed that subject to a special approval of the defendants board of directors a portion of the defendant's properties comprised in LR No. Kericho/Block 4/295 and Kericho Block 4/313 could be surrendered to the deceased in settlement of its aforestated liabilities. I find that the parties signed the said agreement and were therefore bound by the term of the said



document. It is the plaintiff's case that the defendant reneged on the monthly repayment and the refusal to execute the transfer of the said parcels as agreed was a breach of the contractual terms of the parties agreement. I therefore find that the plaintiffs have demonstrated that the defendants are in breach of their contractual obligations.

35. I find and hold that the plaintiffs have proved their case to the extent herein above stated. Accordingly, I enter judgement in favour of the plaintiffs against the defendants jointly and severally as follows;

- (i) An order is issued directing the Defendant to refund the sum of Kshs. 39, 066,696/= being an aggregate of the principal sum of the said friendly loans advanced to it by the deceased between the year 2009 and 11th March, 2017 with interest accruing at a rate of 19% per annum as per parties agreement to the date of filing the suit that is owed to the plaintiffs as the deceased's personal representatives.
- (ii) The said sum shall attract interest at court rates from the date of filing the suit until payment in full.
- (iii) The defendant shall pay the costs of this suit to the plaintiffs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY MAY, 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Miss Sang for the Plaintiff

No Appearance for the Defendant

