



**Co-operative Bank of Kenya Limited v Kanja t/a Eden Farms (Civil Case E424 of 2022)  
[2023] KEHC 20427 (KLR) (Commercial and Tax) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20427 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E424 OF 2022  
JWW MONG'ARE, J  
JULY 17, 2023**

**BETWEEN**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... PLAINTIFF**

**AND**

**MICHAEL DOUGLAS KANJA T/A EDEN FARMS ..... DEFENDANT**

**JUDGMENT**

1. A background of this matter is that on or around 5/7/2021, the Defendant obtained a loan facility of Kshs.10,000,000/- from the Plaintiff. In applying for the loan, the Defendant misrepresented to the Plaintiff that his grandmother, one Njoki Kanja, would offer her 2 properties as security for the repayment of the loan.
2. The Defendant breached the terms of the Offer letter which led the Plaintiff to invoke its statutory power of sale on the properties. However, before the Plaintiff could sell the properties, the Defendant's grandmother lodged HCCC No.236 of 2014 seeking a declaration that the charges on the properties were irregularly and fraudulently registered.
3. On 28/2/2020, Odero J delivered a judgement dated 15/12/2019 allowing Njoki Kanja's suit in HCCC No. 236/2014 and making a declaration that the loan ought to be paid by the Defendant herein.
4. In order to enforce the judgement in HCCC No. 236/2014 and to recover the outstanding amounts under the loan facility, the Plaintiff filed this suit against the Defendant.
5. The Defendant failed to enter appearance and/or file a defence within the stipulated timelines in this suit and the Plaintiff requested judgment in default against the Defendant. On 21/3/2023, the court entered interlocutory judgment against the Defendant.



6. On 4/5/2023, a formal proof hearing was held before this court. At the hearing, the Plaintiff sought relief as set out in its plaint dated 7/10/2022 in this matter which are, inter alia:

- “(a) A declaration that the Defendant is, pursuant to the Honourable Court’s findings and order in HCCC No. 236/2014, liable for the financial loss suffered by the Plaintiff arising from the Plaintiff arising from the disbursement of the loan facility of Kshs.10,000,000.00/-.
- (b) The sum of Kshs.20,755,691.66/- being the total outstanding loan balance as of the date of the suit.
- (c) The sum Kshs.4,204,046.29, being the penalty interest as of the date of the suit.
- (d) The sum of Kshs.936,816.66/-, being the taxed costs paid by the Plaintiff to Njoki Kanja pursuant to the Honourable Court’s judgement in HCCC No.236 of 2014.
- (e) The sum of Kshs.824,799.50/- being the legal costs incurred by the Plaintiff in defending HCCC No.236 of 2014.”

7. The instant suit is to enforce the findings of the Court in the aforementioned judgement delivered in HCCC No. 236 of 2014. The reliefs sought by the Plaintiff are a natural consequence of the final orders issued in HCCC No. 236 of 2014.

8. The Defendant herein did not enter appearance nor defend this suit. It is not disputed that the Defendant is in arrears in loan repayment and that he fraudulently used his grandmother’s properties as security for the loan. I find that the Plaintiff has proven its claim against the Defendant.

9. I therefore see no reason not to enforce the judgement in HCCC No. 236 of 2014 in favour of the Plaintiff. I grant the prayers sought in the plaint dated 7/10/2022 as prayed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2023**

**J. W. W. MONG’ARE**

**JUDGE**

In the Presence of:-

1. Vincent Oloo for the Plaintiff.
2. No appearance for the Defendant.
3. Sylvia- Court Assistant

