



**Siloam Ministries & another v Family Bank Limited & another (Civil Suit E081 of 2022) [2024] KEHC 11532 (KLR) (2 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 11532 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E081 OF 2022  
JK NG'ARNG'AR, J  
OCTOBER 2, 2024**

**BETWEEN**

**SILOAM MINISTRIES ..... 1<sup>ST</sup> PLAINTIFF**

**JANE WANJIKU KIRATU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FAMILY BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SUSAN WAWERU T/A TREVO AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs through the plaint dated 3<sup>rd</sup> November 2022 prayed for judgment against the Defendants jointly and severally for a declaration that the usurious and exorbitant interest and penalties being charged by the 1<sup>st</sup> Defendant on the Plaintiffs' loan account is unlawful and unconscionable and as a result should be set aside. That in the first instance a temporary injunction and thereafter a permanent injunction restraining the defendants, their agents, servants, or whomsoever acting under their directions from advertising, interfering, transferring, selling by public auction or dealing, in any way with the Plaintiffs' portion of land known as LR No. MN/II/4561. That an order directing the 1<sup>st</sup> Defendant to render true and full accounts to the Plaintiffs. That costs of the suit together with interest thereon at such rate and for such period of time as this court may deem fit to grant.
2. The Plaintiff averred that at all material times to the suit, the 2<sup>nd</sup> Plaintiff was the registered owner of the parcel of land known as LR No. MN/11/4561. The 1<sup>st</sup> Plaintiff avers that it took a loan guaranteed by the 2<sup>nd</sup> Plaintiff sometimes in November 2012 for a sum of Kshs. 32,000,000 for completion of construction of the church and a further Kshs. 5,000,000 for the purchase of an adjacent parcel of land making a total of Kshs. 37,000,000. That the Plaintiff has been making monthly repayments towards repayment of the loan and at the time of filing the suit, they had paid approximately Kshs. 60,000,000.



- That in terms of interest, they had paid a total of Kshs. 39,000,000 which exceeds the principal sum lent to the Plaintiff.
3. The Plaintiff stated that they had the loan restructured during the COVID period and averred that they continued making the monthly instalments. That the 1<sup>st</sup> Defendant issued instructions to the 2<sup>nd</sup> Defendant who issued a 45 days' statutory notice which threatened the suit property with public auction. That the said notice is claiming a sum of Kshs. 26,265,700 which the Plaintiffs dispute as punitive interest and penalties having been levied, making it almost impossible for the Plaintiff to redeem its property. That the 1<sup>st</sup> Defendant's statutory power of sale has not arisen and the purported threat of public auction is therefore illegal, null and void.
  4. The Defendants entered appearance and filed a statement of defence dated 24<sup>th</sup> March 2023 that by way of an offer letter dated 28<sup>th</sup> August 2012, the 1<sup>st</sup> Defendant advanced the 1<sup>st</sup> Plaintiff a loan facility of Kshs. 32,000,000 to finance construction of a church, which facility was payable by way of 60 equal monthly instalments of Kshs. 986,916 until payment in full. That by way of a facility dated 20<sup>th</sup> November 2015, the 1<sup>st</sup> Defendant advanced the 1<sup>st</sup> Plaintiff a further loan of Kshs. 5,000,000 repayable by way of 84 equal monthly instalments of Kshs. 120,236.
  5. The Defendants stated that by the letter dated 25<sup>th</sup> May 2017, the 1<sup>st</sup> Plaintiff requested the bank to restructure the existing loan which was accepted and the bank advanced a sum of Kshs. 27,868,000 repayable by way of 120 equal monthly instalments of Kshs. 432,917, and that the purpose of this facility was to restructure the existing loans. That by way of a letter dated 30<sup>th</sup> November 2020, the Plaintiffs requested for restructuring of the loan which led to a 60 days' moratorium on the principal only when the outstanding loan facility was Kshs. 26,522,207.74. When the loan was restructured as requested, the borrower executed an addendum to the offer letter which showed an acceptance of Kshs. 26,522,207.74 as the loan outstanding as at 24<sup>th</sup> December 2020.
  6. The Defendants averred that the 1<sup>st</sup> Plaintiff defaulted in repaying the loan facility as a result of which the available remedies invoked by the 1<sup>st</sup> Defendant included issuing the Plaintiffs with a 90 days' statutory notice of sale dated 2<sup>nd</sup> March 2022 in light of the loan arrears then being Kshs. 26,205,238.39 and that the same was sent by registered post to the 1<sup>st</sup> Plaintiff's address. That the Plaintiffs did not regularize the loan account by clearing the arrears or making any reasonable repayment and the 1<sup>st</sup> Defendant proceeded to issue them with a 40 days' notice of intention to sell the suit property dated 14<sup>th</sup> June 2022.
  7. That on 16<sup>th</sup> September 2022, the bank instructed its auctioneers, the 2<sup>nd</sup> Defendant herein to dispose the charged property by way of public auction so as to recover the outstanding loan balance then being Kshs. 26,625,558.65. That the amount included the additional interest accrued on the outstanding loan amount as per terms of the facility. That it is therefore improper for the Plaintiffs to allege that the interests were exorbitant/punitive, yet they were aware of the bank's interest rates and charges when the 2<sup>nd</sup> Plaintiff agreed to charge the property. The 2<sup>nd</sup> Defendant proceeded to serve the Plaintiffs with the requisite 45 days' redemption notice and the notification of sale dated 19<sup>th</sup> September 2022 whereby the 2<sup>nd</sup> Plaintiff acknowledged receipt by affixing her signature. That the notification of sale informed her of the scheduled public auction which the auctioneers intended to conduct on 1<sup>st</sup> December 2022. That the Plaintiffs have no reasonable cause of action against the Defendants and are not entitled to the prayers sought. The Defendants therefore prayed that the Plaintiff's suit against them be dismissed with costs.
  8. The matter was set down for hearing of the Plaintiffs' case. The Plaintiffs called on witness, Nancy Wangeci, who reiterated the statement dated 3<sup>rd</sup> November 2022 of Jane Wanjiku Kiratu (Deceased),



- who was the founder and senior pastor of Siloam Ministries. The witness also relied on her statement dated 12<sup>th</sup> October 2023 which was adopted as evidence in chief and was cross examined on the same.
9. On 17<sup>th</sup> October 2023, the court herein referred the matter to court annexed mediation. However, as per the Mediator's Report signed by the Mediation Deputy Registrar, Catherine Jackline Amugohe, on 26<sup>th</sup> January 2024, the parties could not reach a mediation settlement. The matter therefore went back to court for directions and was set down for defence hearing on 8<sup>th</sup> May 2024.
  10. The Defendants also called one witness, Alex Lewis Osoro, the Branch Relationships Manager, who adopted his statement dated 24<sup>th</sup> March 2023 as examination in chief and was cross examined on it.
  11. This court gave directions for parties to file and serve written submissions. The Plaintiff filed their submissions dated 19<sup>th</sup> July 2024 while the Defendants filed their submissions dated 24<sup>th</sup> July 2024.
  12. I have considered the Plaintiff's statement dated 3<sup>rd</sup> November 2022, the statement of defence dated 24<sup>th</sup> March 2023, evidence, and submissions of the parties. The issues for determination are: -
    - a. Whether there was a legal basis for the interest and penalties charged by the 1<sup>st</sup> Defendant.
    - b. Whether the Plaintiffs have met the threshold for grant of an injunction.
    - c. Who should bear costs.
  13. On the first issue, it is not in dispute that by way of an offer letter dated 28<sup>th</sup> August 2012 the 1<sup>st</sup> Defendant advanced the Plaintiff a loan facility of Kshs. 32,000,000.00 payable by way of 60 equal monthly instalments of Kshs. 98,916 until payment in full. By way of a facility letter dated 10<sup>th</sup> November 2015, the 1<sup>st</sup> Defendant advanced the 1<sup>st</sup> Plaintiff a further loan of Kshs. 5,000,000 payable by way of 84 equal monthly instalments. It is also not in dispute that the 2<sup>nd</sup> Plaintiff guaranteed the facility by LR No. MN/11//4561 as security and legal instruments prepared and registered.
  14. The loans advanced to the 1<sup>st</sup> Plaintiff are governed by written contracts whose terms, conditions and consequences of non-performance are clearly set out, agreed upon and signed by the parties. Charges were registered by the Defendant to secure their interest over the suit property. The charges contain lending terms and conditions, chargeable interest and penalties among other charges.
  15. According to the records, pleadings and evidence, and which the Plaintiffs so admit, the loan was restructured during the COVID period. The addendum letter dated 24<sup>th</sup> December 2020 indicates that the Plaintiffs made a request dated 30<sup>th</sup> November 2020 for restructure of the loan. The 1<sup>st</sup> Defendant indicated that the request would lead to a 60 days' moratorium on the principal only, the interest was to continue being serviced on a monthly basis for the loan facility totaling to Kshs. 26,522,207.74, repayment date was to be as from 24<sup>th</sup> January 2021, and that the terms and conditions were to remain as per the offer letter dated 8<sup>th</sup> November 2019.
  16. The Plaintiffs now claim that the 1<sup>st</sup> Defendant has been applying rates that were out of the ambit of the offer letter. That the amount indicated as interest charged is way above normal and that the contractually agreed rate of interest was 13.3% but the same was increased to 24.5% by the 1<sup>st</sup> Defendant without prior notice to them. That in line with the current authorities, it offends Section 44 of the [Banking Act](#).
  17. Upon perusal of copies of offer letters on record, the indicated interest rates are indeed 24.5%. They also indicate additional interest to be levied where the borrower fails to pay any sums payable on its due date. This court also notes that the amounts indicated in the loan repayment statements were well



below the amounts required to be paid as monthly instalments. The 1<sup>st</sup> Plaintiff therefore fell in arrears and contacted the bank on a few occasions seeking their indulgence.

18. This court is therefore of the view that the Plaintiffs willingly signed the letters of offer as well as charge documents. They are now bound by the contracts that they are referring to as unlawful and unconscionable, which the court has no jurisdiction to vary. In *National Bank of Kenya v Pipeplastic Samkolit (K) Ltd and Another*, NRB CA Civil Appeal No. 95 of 1995 (2001) eKLR the Court of Appeal observed: -

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.

19. On the next issue of whether the Plaintiffs have met the threshold for grant of an injunction, it has been established that an injunction is an equitable remedy. The party seeking the remedy is therefore required to approach the court with clean hands to benefit from discretionary powers of the court. From the foregoing and pursuant to the principles set out in the case of *Giella v Cassman Brown & Co. Ltd* (1973) EA 358, the Plaintiffs secured loan facilities from the 1<sup>st</sup> Defendant and fell in arrears. The Plaintiffs have therefore not satisfied the conditions for grant of the orders of injunction.

20. The suit is dismissed with costs to the defendants.

**DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 2<sup>ND</sup> DAY OF OCTOBER, 2024.**

.....

**J.K. NG’ARNG’AR, HSC**

**JUDGE**

In the presence of: -

Muyala Advocate for the 1<sup>st</sup> Plaintiff

No appearance Advocate for the 2<sup>nd</sup> Plaintiff

Kamotho Advocate for the 1<sup>st</sup> Defendant

No appearance Advocate for the 2<sup>nd</sup> Defendant

Court Assistant – Mr. Samuel Shitemi

