



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CIVIL SUIT NO. 4 OF 2019**

**FIRST COMMUNITY BANK.....PLAINTIFF**

**VERSUS**

**READY CONSULTANCY LIMITED.....1<sup>ST</sup> DEFENDANT**

**MOHAMED ISSA DUCALE.....2<sup>ND</sup> DEFENDANT**

**MOHAMED HASSAN ALI.....3<sup>RD</sup> DEFENDANT**

**COUNTY GOVERNMENT OF GARISSA.....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. On the 30<sup>th</sup> of April 2019 the Plaintiff, First Community Bank filed suit against the 4 Defendants namely; Ready Consultancy Limited, Mohamed Issa Ducale, Mohamed Hassan Ali and the County Government of Garissa.
2. The Plaintiff's claim arises from an agreement dated 9<sup>th</sup> June, 2014, where the Plaintiff offered to advance working capital loan to 1<sup>st</sup> Defendant to the tune of Kshs.26,000,000/-. The 1<sup>st</sup> Defendant was to pay back the sum of Kshs.28,180,000/- which sum was to be repaid within a period of six (6) months.
3. In the plaint the Plaintiff claims that the loan facility was secured by registration of several motor vehicles in the joint names of the Plaintiff, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants; a letter dated 21<sup>st</sup> May, 2014 where the 4<sup>th</sup> Defendant undertook that proceeds of the contract known as Tender No. C99/T/124/13-14 between the 1<sup>st</sup> Defendant and 4<sup>th</sup> Defendant shall be paid through the 1<sup>st</sup> Defendant's account held at the Plaintiff's bank as a further security; guarantees and indemnity by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and a charge against property known as CIS/MARA/LEMEK/2519.
4. Summary judgement was entered against all the 4 Defendants on the 3<sup>rd</sup> of June 2019 following an application by the Plaintiff dated the 29<sup>th</sup> of April 2019. The said Judgement was however set aside on the application of 1<sup>st</sup> to 3<sup>rd</sup> Defendants on the 29<sup>th</sup> of January 2020 who claimed of having not been served with the summons to enter appearance. The 4<sup>th</sup> Defendant has so far not entered appearance nor filed a defence.
5. Following the court's ruling of 29<sup>th</sup> January 2020, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants filed their joint statement of defence and their witness summons and the matter was set for hearing.

6. On the date set for hearing no counsel nor the 1<sup>st</sup> to 3<sup>rd</sup> Defendants appeared. The Plaintiff was represented and called one witness.

7. The Plaintiff's witness Mr. Mohamed Adan Mohamed, a manager in the Remedial Unit of the Plaintiff informed the court that on the 9<sup>th</sup> of June 2014 an offer letter was issued to the 1<sup>st</sup> Defendant and acceptance received on the 10<sup>th</sup> of June 2014 where the Plaintiff offered to advance to the 1<sup>st</sup> Defendant a working capital of Kshs.26,000,000/- and the said amount was to be repaid within 6 months as a total sum of Kshs.28,180,000/-.

Further he informed the court that the following securities were offered

- Guarantees/indemnity by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
- A charge was registered against property CIS/MARA/LEMEK/2519.
- Motor vehicle log books were held by the Plaintiff; and
- An undertaking/assignment by the 4<sup>th</sup> Defendant that proceeds of the agreement of Tender No. C99/T/124/13-14 between the 1<sup>st</sup> and 4<sup>th</sup> Defendant shall be paid into the 1<sup>st</sup> Defendant's account held by the Plaintiff.

8. Further the witness informed the court that after expiry of 6 months the 1<sup>st</sup> Defendant asked for a further extension of 6 months which was granted on the 4<sup>th</sup> of February 2015 and that is when the property CIS/MARA/LEMEK/2519 was charged. Further after the 1<sup>st</sup> defendant failed to honour its obligation, attempts to auction property CIS/MARA/LEMEK/2519 have not borne any fruit twice as the bids have both times been below reserve price.

9. On the 8<sup>th</sup> of March 2017 the Plaintiff wrote to the 4<sup>th</sup> Defendant to honour its undertaking which it has failed so to do.

As for the vehicles the plaintiff has no physical possession of the same and does not know where the same are.

10. The Plaintiff seeks for judgement jointly and severally for the sum of Kshs 28,180,000; interest at commercial rate and costs.

11. Whereas the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were in court and filed their defence and witness statement the 4<sup>th</sup> Defendant's presence has not been seen.

12. The court has perused the record and therein is a copy of summons to enter appearance bearing the stamp of the Office of the County Secretary, the date on the stamp is not legible nor is there a signature of the recipient.

13. In a relying affidavit dated 15<sup>th</sup> September 2019, one Jackson Mutinda states as follows

*“on the 30<sup>th</sup> of April 2019 I proceeded to the County of Garissa and served the officer authorized to receive court process who acknowledged service by stamping on my copies.”*

14. It was expected that the said process server would state the name of the officer he served and the said officer would have endorsed on original copy of the summons alongside the stamp.

**Order 5 rule 15** provides that:

**“(1) The serving officer in all cases in which summons has been served under any of the**

**foregoing rules of this order shall swear an affidavit and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and the address of the person (if any) identifying the person served and witnessing the delivery and tender of summons. The affidavit of service shall be in Form No. 4 of Appendix A with such variations as circumstances may require.”**

15. Clearly the requirement of the said order as quoted above have not been met for the 4<sup>th</sup> Defendant and the court has no means of satisfying itself whether an authorized officer was indeed served.

16. Secondly **Order 10 rule 8** states:

**“Judgement in default against government –**

**No judgement in default of appearance or pleading upon may be entered against the government without leave of the court and any application of leave shall be served not later than seven days before the return day.”**

17. From the above analysis the court is not satisfied that proper service was effected against the 4<sup>th</sup> Defendant. Secondly leave ought to have been obtained in order to pave way for judgement against the 4<sup>th</sup> Defendant as Government at the county level, the court declines to enter judgement against the 4<sup>th</sup> Defendant.

18. Having stated the above and the Plaintiff having proved its case in the absence of the 1<sup>st</sup> to 3<sup>rd</sup> Defendant and the court being satisfied that their counsel was served, judgment is thus entered against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant jointly and severally, together with interest and costs as prayed.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 10<sup>TH</sup> DAY OF JUNE, 2021.**

.....

**ALI-ARONI**

**JUDGE**