



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. E055 OF 2024

BETWEEN

HAPPYLAND MEAT PROCESSORS LIMITED 1ST
PLAINTIFF

SUSAN NDUTA NJOROGE 2ND
PLAINTIFF

VERSUS

HFC LIMITED DEFENDANT

RULING

Introduction and Background

1. The defendant's Notice of Motion dated 31st January 2025 seeks orders that the plaintiffs' suit be marked as compromised and settled, pursuant to a consent order recorded on 5th November 2024 in **Nairobi Civil Application No. E273 of 2024**.
2. The application is supported by the affidavit of **Regina Anyika**, the defendant's company

secretary. She depones that the plaintiffs instituted this suit contesting their indebtedness and seeking an injunction to restrain the sale of their charged properties. By a ruling delivered on 14th May 2024, this Court dismissed the injunction application, holding that the plaintiffs had admitted the loan facility and were in arrears. Dissatisfied, the plaintiffs lodged an appeal and sought interim relief before the Court of Appeal.

- 3.** While the appeal was pending, the parties reconciled accounts and reached a settlement, culminating in the consent of 5th November 2024 (the consent). In that consent the plaintiffs admitted owing loan arrears amounting to Kshs. 15,878,903/= and undertook to repay the same in six equal monthly installments commencing 15th November 2024, while resuming their contractual monthly instalments of Kshs. 1,092,177/= with effect from 30th November 2024.
- 4.** The consent further stipulated that in the event of default, the defendant would be at liberty to proceed with auction of the charged properties. The defendant asserts that this consent resolved all the issues raised in the High Court suit, including the

dispute over the outstanding loan amount, and thus the present suit should be deemed settled to avoid unnecessary litigation.

5. The plaintiffs oppose the application through a replying affidavit sworn by the 2nd plaintiff. She avers that the consent order was merely interlocutory, granting a conditional temporary injunction pending the determination of the intended appeal. She contends that the consent did not amount to a final compromise of the suit and that there are substantive issues that remain for determination, including the unlawful credit listing, the legality of the defendant's power of sale under the Land Act, and damages. It is argued that these issues were not addressed by the consent and cannot therefore be deemed compromised.
6. The plaintiffs further submit that under **Order 25 Rule 5 of the Civil Procedure Rules**, compromise requires clear evidence of final settlement, which is absent here. They maintain that the application is premature, brought in bad faith, and seeks to extinguish their right to a full hearing.

Analysis and determination

7. I have carefully considered the application, response, and the parties' respective submissions. It is common ground that this suit arises from a loan facility advanced by the defendant to the 1st plaintiff, which was secured by the 2nd plaintiff's properties. In the amended plaint, the plaintiffs seek the following substantive reliefs:

- i. A declaration that the Chargee's right to exercise the statutory remedies under Section 90 of the Land Act, 2012 has not crystallized.*
- ii. An order of reconciliation of all the 1st Plaintiff's accounts with the Defendant to ascertain the outstanding loan amount due to the Defendant.*
- iii. An order of Mandamus do issue directing the respondent to forthwith cause the removal of the 1st Plaintiff's listing with the Credit Reference Bureaus.*
- iv. A permanent injunction restraining the defendant whether by itself, its servants and/or agents from alienating, advertising for sale, taking possession of or otherwise disposing off the whole of that parcels of land known as Nairobi Block 105/5594,*

105/5988, 105/5989, 105/5590,
105/5992, 105/5993 and 105/5996
located on Njiru Road, Nairobi off
Kangundo Road.

- v. *General damages for financial embarrassment and unlawful listing with the Credit Reference Bureaus as a loan defaulter.*
 - vi. *Costs of this suit.*
 - vii. *Any other relief that the court may deem fit to grant.*
8. The issue before the Court is whether the issues and prayers as captured have been fully compromised through the consent. In resolving this question, it is necessary to set out the terms of the consent, which were recorded as follows:

“Considering the circumstances of the case, the Bench invited Counsel for the Parties to negotiate regarding the Motion dated 28th May, 2024 in a bid to reach amicable settlement on the issue of a possible conditional stay of execution:

By Consent:

- i. A temporary injunction be and is hereby issued against the respondent pending the hearing and determination of the intended appeal on the following conditions:***
- ii. The applicant resumes payment of monthly installments of KES 1,092,177/- with effect from 30th November, 2024.***
- iii. The applicant pays the outstanding arrears of KES 15,878,903 as at 31st October 2024 in 6 monthly installments of KES 2,646,483.83 with effect from 15th November, 2024 until payment in full.***
- iv. In the event of any default in any installments under 1 or 2 above, the order of temporary injunction shall stand discharged and the respondent***

shall be at liberty to proceed with execution.”

- 9.** It is clear that the plaintiffs expressly acknowledged their indebtedness to the defendant in the sum of KES 15,878,903/= as at 31st October 2024 and agreed on a structured plan for repayment of both the arrears and future instalments. The consent further provided a self-executing clause in the event of default, allowing the defendant to proceed with execution, including the exercise of its statutory power of sale.
- 10.** Back to the amended plaint, the plaintiffs’ suit was fundamentally anchored on two issues, mainly the uncertainty surrounding the exact loan arrears due from the plaintiffs and the defendant’s entitlement to exercise its statutory remedies. In my view, both questions were conclusively addressed and settled through the consent.
- 11.** The 1st plaintiff argues that the issue of its listing with the Credit Reference Bureau (CRB), together with the claim for reputational damages, was not compromised in the consent. I do not agree. By the

plaintiffs having admitted indebtedness to the defendant, the plaintiffs cannot in the same breath allege that the defendant acted unlawfully in listing them with the CRB.

12. Section 31(4) of the Banking Act and Regulation 18 of the Credit Reference Bureau Regulations, 2013 expressly authorize financial institutions to share information on non-performing loans with licensed bureaus. Being a statutory requirement, listing of a party cannot be the subject of a legitimate grievance where indebtedness is admitted. It follows that so long as the listing is lawful, damages will not lie unless the listing is shown to be false, malicious, or in breach of statutory procedure. No such circumstances have been demonstrated in this case.

13. In light of this, the plaintiffs' complaints about credit listing and reputational damage cannot survive. The admission of indebtedness in the consent operates to compromise the entire substratum of the amended plaint. Once the parties reconciled the accounts, agreed on the precise arrears, and settled the modalities of repayment, nothing remained for

further adjudication since the consequential reliefs were dependent on that disputed indebtedness.

- 14.** The legal effect of such a compromise is well settled. The Court of Appeal in **Special Engineering Company Ltd V Kenya Commercial Bank Ltd, [1988] eKLR**, (Apaloo JA), emphasized that once parties compromise a dispute, litigation on the issues so compromised is at an end. The Court observed:

“In my opinion, a civil suit can be compromised, and that done, litigation in so far as the issues compromised are concerned, is at an end. The common law position is stated on page 403, paragraph 756 of Volume 30, Halsbury's Laws of England (3rd Edition) as follows: All or any of the questions in dispute in an action may be settled between the parties by compromise without trial, and if such compromise is bona fide and validly entered into, the Court does not allow the question so

***settled to be again litigated
between the parties to the
settlement.”***

Disposition

15. Accordingly, I find merit in the defendant’s motion dated 31st January 2025 and grant the prayers as sought. Consequently, the suit filed by the plaintiffs is marked as compromised and settled upon the consent terms recorded on 5th November 2024 at the Court of Appeal in Nairobi Application No. E273 of 2024. The plaintiffs shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI
THIS 3RD DAY OF OCTOBER 2025.**

**F. MUGAMBI
JUDGE**