



Eldoret Hotel Limited v Ecobank Kenya Limited & another (Civil Case 33 of 2020) [2025] KEHC 14808 (KLR) (21 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 33 OF 2020
JRA WANANDA, J
OCTOBER 21, 2025**

BETWEEN

ELDORET HOTEL LIMITED PLAINTIFF

AND

ECOBANK KENYA LIMITED 1ST DEFENDANT

IGARA CONTRACTORS LIMITED 2ND DEFENDANT

JUDGMENT

1. This is one of those old matters that have inexplicably remained pending for a very long time having been filed in the year 2014 at the Environment & Land Court before it was transferred to this Court.
2. The suit was commenced by way of the Complaint dated 14/08/2014, filed through Messrs Ngigi Mbugua & Co. Advocates, whereof the Plaintiff sought Judgment against the Defendants, as follows:
 - a. A permanent injunction against the Defendants restraining them from alienating, selling or dealing with its property comprised in L.R. Eldoret Municipality Block 3/58 so as to extinguish the Plaintiff's interest.
 - b. An order for taking accounts between it and the Defendants over a loan, that had been advanced to the 2nd Defendant by the 1st Defendant and which was secured by a charge over the Plaintiff's land.
 - c. An order that the 1st Defendant does comply with the law before realizing the Plaintiff's security.
 - d. An order do issue compelling the 2nd Defendant to meet its obligation to the 1st Defendant over the loan advanced.



- e. An order restituting the Plaintiff's property to it once it's determined that the same is fully redeemed.
 - f. Costs of the suit.
 - g. Any other relief the Court may deem fit to grant in the circumstances.
3. In the body of the Plaint, it was pleaded that the Plaintiff is the registered owner of the parcel of land described as Eldoret Municipality Block 3/58 (suit property), that by the Charge dated 27/04/2011, the Plaintiff agreed with the Defendants to create a charge over the property to secure the sum of Kshs 15,500,000/- to be advanced to the 2nd Defendant by the 1st Defendant to finance a road construction project along the Nyando/Kericho Highway which had been granted to the 2nd Defendant by the Kenya National Highway Authority (KENHA). It was pleaded that under both the charge, the letter of offer and the deed between the Plaintiff and the 2nd Defendant, the proceeds of the road construction contract between the 2nd Defendant and KENHA were to be channelled through the 2nd Defendant's bank account held at the 1st Defendant's bank. It was further pleaded that on 9/08/2011, KENHA credited the 2nd Defendant's bank account number [xxxxxxx] with a sum of Kshs. 9,101,062.60 as part-payment of the road construction contract proceeds, but the 1st Defendant only recovered Kshs 3,079,232.30 towards the loan, and that contrary to what was agreed between the parties, allowed the 2nd Defendant to divert Kshs 6,021,830/- to other accounts unknown to the Plaintiff, thus rendering the secured account under-serviced and exposed the suit property at the risk of being realized by sale in a public auction.
 4. It was pleaded that to prevent realization of the property on account of the default by the 2nd Defendant, the Plaintiff deposited with the 1st Defendant, Kshs 500,000/-, in 2013, which amount, together with interest, was liquidated on 1/08/2014, by which date the Plaintiff had caused Kshs 15,601,898/- to be processed through the 2nd Defendant's said account. The Plaintiff thus complained that despite its efforts to cause the proceeds of the road construction contract to be channelled through the said account, the Defendants have colluded to disburse the same to other uses other than the loan repayment, and that at the time of filing the suit, there was a deficit or arrears of Kshs 6,433,837/-. According to the Plaintiff, from the contractual documents, it is only obligated to settle a sum of Kshs 101,898/-, which is the amount outstanding from the initial sum of Kshs 15,500,000/- disbursed, but that the 1st Defendant has set in motion the process of realizing the property. The Plaintiff also listed particulars of illegality, which included the allegation that no statutory notice preceded the intended realization as required under the *Land Act*, No. 6 of 2012, and that the power of sale has not accrued. The Plaintiff also disclosed that the suit property was also the subject of another pending suit, namely Eldoret Land & Environment Court Case No. 632 of 2012.
 5. The 1st Defendant, through Messrs Macharia Njeru & Co. Advocates, filed the Statement of Defence dated 15/09/2014, in which it denied the allegations made in the Plaint, and it contended, that, in any event, the Plaintiff had sought indulgence from the 1st Defendant on behalf of the 2nd Defendant but had subsequently failed to make good its proposals.
 6. Both the Plaintiff and the 1st Defendant also filed Witness Statements, which basically reiterated the positions advanced in the Plaint and the Defence as already set out. They also filed respective bundle of documents. The 2nd Defendant did not however enter appearance or file a Defence.
 7. Together with the Plaint, the Plaintiff had also filed an Application seeking an interlocutory injunction pending hearing and determination of the suit. This Application was heard by E. Ogola J, who, by his Ruling dated 28/07/2022, found that although there was evidence of service of a statutory notice as



required under Section 90 of the Land Act, there was no evidence of service of a notice to sell pursuant to Section 96 of the Land Act. The Judge then allowed the Application and granted the interlocutory injunction.

8. The matter then proceeded for trial in which each side called 1 witness. Before the trial commenced on 15/07/2024, Mr. Ngigi Mbugua, Counsel for the Plaintiff made an opening statement in which he stated that during the pendency of the suit, an ownership dispute arose between the Plaintiff and the Kenya Railways Corporation resulting to a Court case, namely, Eldoret ELC No. 632 of 2012 already referred to, in which Judgement was delivered, whereof the suit was dismissed, but that thereafter, the Kenya Railways filed another suit, namely Eldoret ELC No. E017 of 2023 against which the Plaintiff filed a Petition. Mr. Ngigi stated that, in the process, the suit property was repossessed and fenced off by Kenya Railways, ownership was never determined, and that the matter is still pending at the ELC. He therefore left it to the Court to determine whether the trial should still proceed under those circumstances. Mr. Kimani, Counsel for the 1st Defendant downplayed the effect of the alleged pending ELC case, and insisted that the trial do proceed as scheduled. In these circumstances, the said matters having been raised only from the bar, and there being no Application before me seeking to stay the proceedings, I allowed the trial to commence.
9. The Plaintiff's witness, PW1, Japheth Kipkemboi Magut, then took the stand. He described himself as the Plaintiff's Managing Director, and adopted his Witness Statement. He confirmed that the Plaintiff gave out the suit property as collateral to secure the loan of Kshs 15,500,000/- advanced to the 2nd Defendant by the 1st Defendant. He claimed that the value of the suit property is currently about 1 billion and pointed out that the 1st Defendant had valued it at Kshs 96,000,000/- with a Forced Value of Kshs 76,800,000/-, and that the property is undeveloped. He contended that the monies secured by the charge has been repaid almost in full, that Kshs 9,101,062/- was paid by KENHA on 9/08/2011, and that another Kshs 3,600,000/- was also later paid. He stated that when the account fell into arrears, he paid a sum of Kshs 5,000,000/- in August 2014 through a Fixed Deposit Account he opened at the 1st Defendant, which money the 1st Defendant also utilized to repay the loan. According to him therefore, the 1st Defendant, in total, received Kshs 15,601,898/-, and should therefore refund Kshs 101,000/-. He testified further that in none of the contract instruments did he authorize the 1st Defendant to make further advances to the 2nd Defendant using the suit property as security. He also pointed out that the 1st Defendant did not file any counterclaim, and reiterated that at the moment, the Government has fenced off the property, and that the issue is in Court, and thus the 1st Defendant will not even be able to sell it.
10. In cross-examination, he conceded that he did not have any Valuation Report to support his claim that the value of the property was Kshs 1 billion. He conceded that the Charge, at clause 2.2 thereof recognized that the loan accrued interest, that by the Letter of Offer dated 30/03/2011, the repayment period was 6 months, and that the loan was not repaid within such 6 months. He also acknowledged that the loan statement indicated the outstanding amount, as at 08/09/2014, to be Kshs 11,906,839.47, and agreed that he had not paid any amount thereof claiming that he did not pay because he did not agree with the statement. When shown his letter dated 29/11/2013, he agreed that by the letter, he was requesting for indulgence from the 1st Defendant. He agreed that he held several meetings with the 1st Defendant, and stated that although the 1st Defendant did not give him the outstanding figure, he agreed to deposit Kshs 5,000,000/- in the Fixed Deposit Account to stop the auction set for 28/08/2014, and that he did not make any further payments since the loan had been paid in full. He agreed that the Kshs 9,101,062.60/- paid by KENHA was reflected in the statement of account but pointed out that when that payment was made, the account was already overdrawn by Kshs 3,000,000. He also conceded that prior to the sale attempt, he received a statutory notice



- which indicated the outstanding balance as Kshs 16,928,438.07, and agreed that the address appearing thereon is his. He also agreed that the amount of Kshs. 15,601,898 he claims KENHA received does not include interest. He then insisted he was only obligated to pay a sum of Kshs 101,898/-.
11. In re-examination, he pointed out that the statutory notice, though it bore its correct address, is not supported by a Certificate of Postage. He also stated that he is not aware whether the 1st Defendant has made any efforts to recover the loan from the 2nd Defendant. He also stated that he does not know how the overdraft of Kshs 3,000,000/- was made. He further stated that the Fixed Deposit Account was in his personal name and the 1st Defendant was to only access it if KENHA did not pay, and that the 1st Defendant therefore took the Kshs 5,000,000/- from the Fixed Deposit Account unlawfully. He claimed that the amount in the Fixed Deposit Account was to attract interest at 11 per cent which he cannot now access.
 12. In response to questions from the Court, he stated that although the statutory notice bears his correct address, he never received it, and that he engaged the 1st Defendant because they contacted him, which was around the same time that the statutory notice was sent.
 13. The 1st Defendant's witness, DW1, was Edith Wanjiku, who stated that she works at the 1st Defendant's Remedial Management Department. She, too, adopted her Witness Statement and reiterated the matters already stated therein. She reiterated that the debt was partially paid and that the outstanding amount was Kshs 13,866,706.22. She refuted the Plaintiff's denial that the 1st Defendant issued a Statutory Notice and referred to the Notice dated 10/06/2013, indicating an outstanding amount of Kshs 16,928,438.09 as at that date. She also referred to the 1st Defendant's Valuation Report dated 23/08/14 prepared before the public auction fixed for 28/08/2014. She testified that since 2014, no payment has been made and denied that the Defendants colluded to divert funds. In cross-examination, she stated that Directors of the 2nd Defendant – Hafidh Masiya Ramadhan and Ben K. Muhanji - gave personal guarantees for repayment of the loan, and that the 1st Defendant recovered Kshs 6,969,868.92 from the loan account, and Kshs 3,634,705.92 from a Director of the Plaintiff's Fixed Deposit Account.
 14. She conceded that the 1st Defendant received Kshs 9,101,062.60 on 19/08/2011 from KENHA out of which it utilized Kshs 3,080,868.48 in redemption of the loan, and stated that KENHA never paid any further amount. She stated that the said payment from KENHA came in late, and that the loan ought to have been repaid in full by 29/10/2011. She also claimed that the 1st Defendant was in constant communication with the 2nd Defendant in respect to the late payments and delays. In re-examination, she claimed that out of the sum of Kshs 9,101,062.60 paid by KENHA, the 1st Defendant only utilized Kshs 3,080,868.48 as aforesaid, in redemption of the loan because the loan was not yet due for any further payment. She then stated that the 1st Defendant elected to go after the 2nd Defendant only after making demands to the 2nd Defendant, and that the Plaintiff came forward and agreed to liquidate the loan, and in fact, paid part of the loan. Regarding the demands to the 1st Defendant, she claimed that the letters written in 2013 produced in evidence were just a few of those that were issued, and that the engagement with the 1st Defendant has always been continuous.
 15. At the close of the trial, the parties filed written Submissions. The Plaintiff's Submissions is dated 5/03/2015, while the 1st Defendant's is dated 11/03/2025.

Plaintiff's Submissions

16. Counsel for the Plaintiff, in his brief Submissions, reiterated that the Charge was registered and the funds disbursed to the 2nd Defendant, but that on a separate arrangement unknown to the Plaintiff,



the 2nd Defendant was allowed to access the funds, thus putting the account into arrears and default. Counsel submitted that the Plaintiff was made aware and through its Director, made a payment of Kshs 5,000,000/-. He submitted that there was a veiled attempt by the 1st Defendant to explain the arrangement between the 1st and 2nd Defendants that allowed them to vary an existing contract, but which, Counsel contended, did not involve the Plaintiff. He thus urged that the monies that were received from KENHA and the cash deposit of Kshs 5,000,000/-, fully satisfied its charge to the 1st Defendant. He asserted that the 1st Defendant could not also explain what steps it has taken to recover the balance, if any, from its principal debtor. He urged further that the 2nd Defendant has made several offers to liquidate its debt in instalments to the 1st Defendant without success, that, in the circumstances, the security ought to be discharged forthwith, and the Defendants be restrained, permanently, from ever attempting to realize the security. Counsel also submitted that it emerged during the trial that the property has been repossessed by the lessor, the Government of Kenya, and is already subject to other proceedings before the Environment and Land Court, and that by that reason, whichever way the Court rules, it has to take judicial notice of that development.

1st Defendants' Submissions

17. Mr. Kimani, Counsel for the 1st Defendant, in reiterating the witness testimonies, pointed out that as testified by DW1, the principal loan sum of Kshs 15,500,000/- was payable in lumpsum within 6 months from the date of disbursement, however, interest would be serviced monthly with effect from 30 days from the date of disbursement, and subsequent instalments on interest payments would be paid on the 30th day of each succeeding month until the loan was repaid in full. He also pointed out that the interest was agreed at the 1st Defendant's base lending rate plus 3 per cent per annum with the base rate noted then at 15.75 per cent per annum. He also highlighted that under Clause 2.3 of the Charge instrument, no payment by the charger was to be treated as being payment on account of the loan unless all interest due had been paid. He then observed that the Plaintiff acknowledges that it was not aware of any interest payment obligation by the 2nd Defendant. Regarding the issue of the suit property having been repossessed by the Government, and thus now out of the jurisdiction of this Court, Counsel urged that this submission by the Plaintiff is contradictory as the Plaintiff cannot, on one hand, seek reliefs from this Court while on the other hand, claim that the Court has no jurisdiction. He also observed that in any event, pleadings from the alleged proceedings before the Environment and Land Court were never exhibited by the Plaintiff.
18. Counsel then submitted that the Plaintiff ought not to benefit from its own default and cited the Court of Appeal case of Nabro Properties Ltd. vs Sky Structures Limited and 2 others [2002] 2 KLR 299. He urged that the Plaintiff, having admitted that full principal and interest was never paid to the 1st Defendant, is undeserving of the orders sought. Counsel then cited the evidence, including documents, letters, and bank statements, before Court, demonstrating that the 1st Defendant indeed disbursed an amount of Kshs 15,500,000/- to the 2nd Defendant, which was secured by the suit property, and also confirming default on the part of the Plaintiff and the 2nd Defendant. He then revisited the issue of the alleged repossession of the suit property by the Government, and reiterated that no evidence has been presented to substantiate the same. He cited the case of Elizabeth O. Odhiambo v South Nyanza Sugar Co. Ltd [2019] eKLR, and several others, and submitted that the allegation was not contained in the pleadings, and that parties cannot litigate through Submissions, but by pleadings and evidence.
19. He also submitted that the Plaintiff, having failed to make good the repayments, no injunction ought to issue in its favour. He cited the case of Resort Limited v Credit Bank Limited & Another [2021] eKLR, and several others. Regarding the prayer for taking of accounts, Counsel observed that it is admitted that the 1st Defendant has exhibited the loan statement of account and therefore, the prayer



cannot issue. He also cited the case of Heineken East Africa Import Limited & Another-vs- Maxam Limited, Civil Appeal No. E403/E404 of 2020, and submitted that an order of accounts cannot be issued as a final order, but only at the interlocutory stage. In conclusion, he also urged that the Plaintiff, through its own Submissions (perhaps because of the Plaintiff not submitting thereon), appears to have abandoned the rest of the reliefs. He cited the case of Velas Enterprises Limited v Paragon Electronics Limited [2015] eKLR.

Determination

20. The one broad issue for determination in this case is “whether the 1st Defendant is entitled to exercise its statutory power of sale to recover the amounts alleged to be outstanding under the loan the subject hereof, by selling the suit property lodged as security, by public action”.
21. In this case, it is not in dispute that the Plaintiff is the registered proprietor of the suit property in respect to which, by the Legal Charge dated 27/04/2011, the Plaintiff and the 1st Defendant created a charge over to secure the sum of Kshs 15,500,000/- advanced to the 2nd Defendant by the 1st Defendant. It is also not in dispute that the date of the disbursement of the loan was 3/05/2011. It is further not in dispute that the purpose of the loan was for financing a road construction project along the Nyando-Kericho Highway, which had been granted to the 2nd Defendant by KENHA.
22. It is also not in dispute that it was a term of the agreement that the proceeds of the road construction contract between the 2nd Defendant and KENHA were to be channelled through the 2nd Defendant’s bank account held at the 1st Defendant’s (loan account).
23. Clearly, the Plaintiff’s main cause of action is that on 9/08/2011, KENHA credited the 2nd Defendant’s said loan account number [xxxxxxx] with a sum of Kshs 9,101,062.60 as part payment of the road construction contract proceeds but from it, the 1st Defendant, contrary to the terms of the agreement, inexplicably only recovered Kshs 3,079,232.30 towards liquidation of the loan, and, instead, permitted the 2nd Defendant to access and withdraw the balance of Kshs 6,021,830/-. According to the Plaintiff, this is the root cause of the loan account going into default in respect to which the 1st Defendant, despite being the author thereof, now wants to exercise the statutory power of sale.
24. The 1st Defendant, in responding to the above assertion, and explaining its reason for recovering only the sum of Kshs 3,079,232.30 out of the payment of Kshs 9,101,062.60 made by KENHA on 9/08/2011, referred to the preamble to the Letter of Offer (Request for a contract financing facility), and Clause 2.3 of the Charge instrument.
25. On “repayment”, the preamble is premised as follows:

“The Principal shall be repaid in lump sum within six (6) months from the date of disbursement. However, interest will be serviced monthly with effect from 30 days from the date of disbursement and subsequent instalments on interest payments shall be paid on the 30th day of every succeeding month until the loan is repaid in full.”
26. On “interest”, the preamble provides that:

“Interest will be at the Bank’s Base Lending Rate Plus 3 per cent per annum. The Current Base Rate as at the date hereof is 15.75 per cent per annum”



27. On its part, Clause 2.3 of the Charge instrument provides as follows:
- “No payment by the Chargor to the Chargee shall be treated as being a payment on account of the Loan unless all interest due or deemed to be due or accrued has been paid in full.”
28. According to DW1 therefore, out of the sum of Kshs 9,101,062.60 paid by KENHA, the 1st Defendant only utilized Kshs 3,080,868.48 in redemption of the loan because the loan was not yet due for any further payment.
29. In analyzing the above explanation, I note, as aforesaid, that the date of the disbursement of the loan was 3/05/2011, while the payment by KENHA was made on 19/08/2011. This was therefore about 3 ½ months after the disbursement. Considering the terms of the Letter of Offer providing that the loan was repayable in lump sum within 6 months, it follows that the full repayment of the lump sum would not be due until about 3/11/2011, although interest was still payable at monthly instalments, from the date of disbursement. To this extent, the 1st Defendant’s explanation that the principal loan had not yet matured for repayment in full by 19/08/2011, and that as such, the 1st Defendant could not take the full amount paid by KENHA, sounds plausible. In any event, the Plaintiff never responded to nor commented on this explanation by the 1st Defendant. The Plaintiff did not also deny that the contract comprised of both the Letter of Offer and the Charge instrument and that the above clauses applied.
30. The Plaintiff, having failed to controvert the explanation given by the 1st Defendant, and the surrounding facts not being disputed, I find no material to justify a disagreement with or overruling that explanation. In view thereof, I have no grounds to accept the Plaintiff’s argument that the 1st Defendant ought to be stopped from realizing the security on the ground of the ground of failure to utilize the full payment made by KENHA. The fraud alleged by the Plaintiff to the effect that the Defendants colluded to divert or disburse funds paid into the loan account to other uses other than the loan repayment remains unproven.
31. On the issue of default in repayment of the loan, and service of a demands and notices, the 1st Defendant produced Statements of Account. There is then the demand letter dated 24/04/2013 from the 1st Defendant demanding that the 2nd Defendant (borrower) liquidates the outstanding loan which was indicated to in default at the sum of Kshs 14,574,601.80 as at 31/03/2013, about 8 months after expiry of the contractual 6-months repayment period. There is also the 90 days statutory notice dated 10/06/2013 from the 1st Defendant’s Advocates, Kale Maina Bundotich, issued under the provisions of Section 90 of the *Land Act*. The same is addressed through the postal address number 815-30100 Eldoret, and is indicated that it was to be sent by “Registered Mail”. The notice indicates the outstanding amount as at the said date, to have accumulated to Kshs 16,928,438.09. The Plaintiff however denies receiving the statutory notice and, indeed, I have not found any evidence, such as a Certificate of Postage, demonstrating that the letter was actually postage. The 1st Defendant has not produced any.
32. There are also several letters produced by the 1st Defendant demonstrating that upon default, the parties entered into settlement negotiations. There is, first, the letter dated 3/05/2013 from the Plaintiff’s Advocates, Ngigi Mbugua & Co. The letter acknowledges that the 2nd Defendant was in default, and to prevent the public auction from proceeding, made a proposal to deposit a sum of Kshs 5,000,000/- in a fixed deposit account, to secure repayment, on the Plaintiff’s that if the 2nd Defendant (borrower) shall have failed to liquidate the amount due within 6 months, the Plaintiff would pay the guaranteed the sum. The letter was written under a “without prejudice” basis but since the payment was indeed made, the privilege presumed under the “without prejudice” principle is deemed to be



spent. There is, secondly, the letter dated 26/11/2013 from Messrs Kiplagat & Co. issued on behalf of PW1, the Plaintiff's Director, promising to pay to the 1st Defendant, in part-redemption of the loan, a sum of Kshs 2,000,000/- by 6/12/2013, and another Kshs 2,000,000/- by 10/12/2013.

33. Considering the contents and purpose of above letters, it is clear that the Plaintiff all along, acknowledged that the loan was in default and that the Plaintiff, as guarantor, was obligated to settle it. No challenge was raised in any of the letters objecting to the 1st Defendant's right to realize the security. I therefore find the filing of this suit and the raising of the legal challenges alleged by the Plaintiff in this suit to be clear afterthoughts brought up simply to delay the 1st Defendant's entitlement to exercise its statutory power of sale.
34. For the above reasons, although I have found that the 1st Defendant has failed to demonstrate that it in fact forwarded the statutory notice to the Plaintiff, my view is that not all instances of failure to serve a statutory notice should automatically, as a matter of right, void the chargee's right to execute its statutory power of sale. Determination of each case ought to depend on its own facts and surrounding circumstances. Looking at this matter holistically, I find the 1st Defendant's failure to prove service of the statutory notice, not by itself alone, sufficient to vitiate the 1st Defendant's right to exercise its statutory power of sale in this matter. This is because the purpose of the requirement to issue a statutory notice is to accord the chargor adequate opportunity to redeem the security. From the record, it is clear that the Plaintiff has been afforded adequate opportunity for more 10 years, first, by the mere fact of this suit being in Court for more than such 10 years, and also from the content of correspondence exchanged after the date of the statutory notice. The Plaintiff cannot therefore argue that it has been prejudiced in any way. I also do not find any challenge raised by the Plaintiff regarding service of a notice to sell pursuant to Section 96 of the *Land Act*. It is also not disputed that neither the Plaintiff nor the 2nd Defendant has since made any further payments to liquidate the outstanding amount, or any part thereof.
35. The above surrounding facts ought to therefore be deemed, in my view, to have "cured" the 1st Defendant's inability to prove service of the statutory notice.
36. It is indeed a settled principle of law that parties to a contract are bound by the terms and conditions thereof, and it is not the business of the Courts to rewrite contracts. This was aptly restated in the Court of Appeal case of National Bank of Kenya Ltd vs. Pipe Plastic Samkolit (K) Ltd (2002) 2 E.A. 503, (2011) eKLR, as follows:

"A court of law cannot rewrite 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."
37. There was also an allegation that by the time that the sum of Kshs 9,101,062.60/- paid by KENHA, the account was already inexplicably overdrawn by Kshs 3,000,000/-. This line was however not pursued further and I thus deem it have been abandoned.
38. Regarding the issue of the suit property having been repossessed by the Government, and thus now out jurisdiction of this Court, I agree Mr. Kimani that this submission by the Plaintiff is contradictory as the Plaintiff cannot, on one hand, seek reliefs from this Court while on the other hand, also claim that the Court has no jurisdiction. I also agree that, in any event, no pleadings from the alleged proceedings before the Environment and Land Court having been exhibited, this Court cannot consider or make any determinations on that issue.



39. In conclusion, I may say that it is unfortunate that the Plaintiff has for more than 10 years enjoyed evidently undeserved interlocutory injunction orders and thereby kept away the 1st Defendant from its lawfully accrued rights to realize the security for all that long.

Final Orders

40. For the above reasons, this suit is dismissed with costs to the 1st Defendant.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF OCTOBER 2025.

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Mr. Ngigi Mbugua for the Plaintiff

N/A for the 1st Defendant

N/A for the 2nd Defendant

Court Assistant: Brian Kimathi

