

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCLC NO. E380 OF 2024

GEORGE WACHIRA KANYONI.....
.....PLAINTIFF

VERSUS

JAMES MWANGI WARUGONGO.....
DEFENDANT

JUDGMENT

1. The plaintiff filed the plaint dated 11th September, 2024 seeking judgment against the defendant for:-

a. An order of this honourable court directing the registrar of Lands Nairobi whether by himself, his servants, employees, agents and/ or by whomsoever to register, transfer and /or issue titles pertaining to Land Reference Numbers 14902/32 and 14902/41, situate in Nairobi County, in favour of the plaintiff herein.

b. An order of this honourable court restraining, compelling and/or prohibiting the defendant whether by himself, his servants, employees, agents and/or by whomsoever from entering onto trespassing or interfering, in any way, with the plaintiff's quite possession and/or enjoyment of all those parcels of land reference numbers 14902/32 and 14902/41 in Nairobi County or purporting to subdivide, sell, alienate, transfer, mortgage, lease, rent and/or otherwise dispose of the said parcel of land

reference numbers 14902/32 and 14902/41 in Nairobi County or otherwise dealing with any portion thereof at all.

c. Costs of the suit.

d. Any other or further relief that this Honourable Court may deem fit

2. The background of the plaint is that on the 11th May 2022, the plaintiff entered into an agreement with the defendant that saw the plaintiff advance a loan of Kshs.11,000,000/- to the defendant with the said amount being transferred to the defendant's account, and received on the same date.
3. The plaintiff states that the loan attracted interest at the rate of 9% per month which was compounded to Kshs.5,940,000/- and was payable on/or before 11th November, 2022 together with the principal amount. The said loan was secured by the defendant's properties situated in Nairobi County, to wit, L.R. Nos. 14902/32 and 14902/41 (herein referred to as the suit properties). He pleaded that the defendant allowed him to take possession of the land as soon as the agreement was executed.

4. That while the defendant is the absolute beneficial proprietor of the suit properties, and upon taking possession, he undertook projects on the said properties. Further, that when the loan fell due, no payments were made by the defendant. He stated that he has been looking for the defendant to make good the debt to no avail. Further, that since the defendant cannot be found to make good payment on the loan, he continues to enjoy possession of the suit properties and has put it to use since the loan to the defendant was secured by the suit properties.
5. The plaintiff pleaded that he continues to suffer unjustly as a result of the non-payment, and that the suit properties ought to be transferred to his name. Further, that if the transfer is not done, he will continue to suffer as business person without the realization of the said money that was loaned to the defendant.
6. Further, and that since he took possession of the suit properties, he has enjoyed possession thereto and that the defendant has neither come back to reclaim nor pay back the loan. He stated that the defendant's action suggest that he has given up any claim over the suit properties for the said loan amount. He stated that he is ready and willing to pay all necessary processing fees to enable the transfer of tittle over the suit properties herein.

7. Further, and that as a result of the defendant's actions, he is unable to peacefully and quietly use and/or deal in the suit properties unless a transfer of title(s) is effected in his name. That despite demand and notice of intention to sue having been given, the defendant has either individually and/or through the agents failed, declined, ignored, neglected and/or refused to comply therewith whether as demanded or any part thereof or at all thereby rendering the filing of this suit necessary.
8. The defendant did not enter appearance or file a statement defence. The order to serve defendant by way of advertisement was granted 15th November 2024 and the same executed on the 14th February 2025 through the local dailies.
9. This matter proceeded for formal proof on 22nd October, 2025. The plaintiff, PW1, produced the lists of documents dated 11th September, 2024 as exhibits nos. 1, 2, 5 and 7 respectively. He also produced the documents contained in his supplementary list of documents dated 16th October, 2025 as nos. 3 and 4 respectively. He did not produce the defendant's national identity card and the KRA Pin certificate.

10. The plaintiff filed his written submissions dated 18th November, 2025. I have considered the pleadings, the evidence, and the written submissions filed by the plaintiff. The issue for determination is whether the suit has merit.

11. Section 107 of the **Evidence Act** provides:-

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

12. Further, **Section 109** provides as follows: -

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

13. While the suit is undefended, it is upon the plaintiff to place sufficient evidence to satisfy the court that indeed he has proved his case on a balance of probabilities to merit the orders sought.

14. The plaintiff contended that he advanced a loan of Kshs.11,000,000/- to the defendant vide a loan agreement dated 11th May, 2022, and that the said loan would have attracted an interest of 9% of the principal amount. The plaintiff contended that as security of the loan advanced, the defendant gave security of his two parcels of land as guarantee to the loan which the plaintiff took possession thereof. In the plaint, he reiterated as can be seen in paragraphs 7,9,11, and 14, that he took possession of the suit properties, which he has enjoyed quiet possession thereof and has in fact undertaken projects on the said properties. However, he contradicts himself in paragraph 12, 13 and 16 that he suffers as a result of the non-payment of the loan, and that he will continue to suffer as a business person without the realization of the said money. Further, that he has been unable to quietly and peacefully use or deal in the suit properties unless the same is transferred to him.

15. My attention was drawn to the agreement dated 11th May, 2022. Clause 2 (a) of the agreement provided that the loan is for a period of one week and is due on 11th November, 2022. If the same was indeed to last for one week, the discrepancy or error to reflect the period of repayment as six months from the date of execution would not have occurred. Clause 3 provided for the

default clause which gave the plaintiff herein the liberty to institute legal proceedings to recover the monies advanced and the interest accrued including any expenses. The agreement does not stipulate transfer of the suit properties as a means of recovery of the loan advanced.

16. Further, the plaintiff produced a copy of ownership documents indicating the defendant as the owner of the suit properties. A copy of the certificate of title with respect to LR. No. 14902/41, and a copy of transfer by chargee with regard to LR. No. 14902/32. A copy of transfer by charge is not proof that the defendant is indeed the owner of this property. In my view, and with regard to both properties, a copy of a recent official search would have sufficed. Equally, and while the plaintiff stated that he is a business person, he did not inform the court his trade, and demonstrate the loss suffered since he claims to be in possession and has undertaken projects on the same.

17. From the above, it is my finding that the loan agreement does not stipulate for the transfer of the suit properties as a means of recovery, and the contradictions in the plaint make it clear that the plaintiff has not proved his case on a balance of probabilities.

18. The plaint dated 11th September, 2024 lacks merit and it is hereby dismissed. I make no orders as to costs.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 18TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
18/12/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Angwenyi for the Plaintiff