



REPUBLIC OF KENYA



KENYA LAW
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**Said v Cooperative Bank of Kenya Limited (Civil Suit 1 of 2024)
[2025] KEHC 18958 (KLR) (22 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL SUIT 1 OF 2024
WM MUSYOKA, J
DECEMBER 22, 2025**

BETWEEN

MOHAMMED HASSAN SAID PLAINTIFF

AND

COOPERATIVE BANK OF KENYA LIMITED DEFENDANT

JUDGMENT

1. This is a suit that was initially filed at the Chief Magistrate's Court at Busia, as Busia CMCCC No. E355 of 2021, before it was transferred to the High Court, for disposal, where it became Busia HCCC No. E001 of 2024. It seeks to restrain the exercise of the statutory power of sale, conferred upon the mortgagee and chargee, by the relevant land legislation. The principal prayer, in the plaint, is for a permanent injunction, to restrain the defendant, and others, not named as parties, from selling, advertising for sale, auctioning or in any way interfering with the rights of the plaintiff over Bukhayo/Mundika/8263.
2. Although the sole prayer is for permanent injunction, it is not pleaded, in the body of the plaint, that the defendant has commenced the process of foreclosing on Bukhayo/Mundika/8263, or disposing of that property, by way of exercise of the statutory power of sale. Indeed, it is not even pleaded that the said property had been offered as security, for the loan pleaded in the plaint. The prayer, for permanent injunction, is, therefore, not aligned to the pleadings in the main body of the plaint. There would be no basis for grant of the orders sought, in the plaint, in the circumstances.
3. All what is pleaded is that a loan was advanced to the plaintiff, by the defendant. The amount is not pleaded. It is pleaded that the plaintiff gave out a title deed, as security for the loan, but the details of the land offered as security are not disclosed. It is averred that the plaintiff had been repaying the loan, but the defendant was not furnishing him with a comprehensive statement on his loan account. He asks that accounts be taken, to enable him redeem his property, yet, curiously, there is no prayer for accounts.



4. The defendant filed a defence, where it concedes that it had extended a facility of Kshs. 17,500,000.00 to the plaintiff, secured by Bukhayo/Mundika/8263. It is pleaded that the plaintiff was in default, and the statutory power of sale had accrued. The amount outstanding is said to be Kshs. 1,900,648.60, as at 22nd February 2019. The defendant prays for judgement in that amount, with interest, at prevailing commercial rates, since 22nd February 2019. The defence pleadings were amended, on 10th November 2022, to include a counterclaim, for Kshs. 25,830,150.04, with interest at prevailing commercial rates, as at 23rd August 2021, until payment in full. It was this amendment which informed the transfer of the matter to the High Court, as the amount claimed exceeded the jurisdiction of the Magistrate's Court.
5. The Advocate for the plaintiff, Mr. Ashioya, pulled out of the matter, at some stage, and, for the purpose of the hearing on 22nd October 2025, the plaintiff was served in person, and an affidavit of service was filed, sworn on 21st September 2025. The plaintiff did not attend court, and the hearing proceeded in his absence.
6. The defendant presented a witness, Ms. Joan Chepkemioi Tanui, an officer serving at its Busia branch. She adopted her witness statement, and produced the documents, attached to her list of documents, as defence exhibits.
7. As the plaintiff did not show up at the hearing, to present his case, what he alleged in his plaint was not proved. In any case, as stated above, the plaint was poorly drafted, and whatever is placed in it cannot support grant of the prayers sought, even if the plaintiff were to testify. Each party is bound by its pleadings, and the orders made by the court are founded on what is pleaded. The evidence to be tendered ought to be founded on the pleadings. The defendant presented its case, which was not controverted, as the plaintiff did not testify, nor call a witness, who would have challenged it.
8. In the circumstances, the suit herein is for dismissal, and I hereby dismiss it. The counterclaim is hereby allowed, as prayed. The defendant shall have the costs. Orders accordingly.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 22ND DAY OF DECEMBER 2025.

WM MUSYOKA

JUDGE.

Mr. Arthur Etyang, Court Assistant, Busia.

Mr. Mohamed Hassan Said, the plaintiff, in person.

Advocates

Ms. Owuor, instructed by Ogejo Omboto & Kijala, Advocates for the defendant.

