



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**COMMERCIAL E003 OF 2024**  
**(FORMERLY ELC E005 OF 2022)**

**MAIN SUIT**

**NJERU WA WANG'OMBE ..... 1<sup>ST</sup>**  
**PLAINTIFF**  
**MARTIN MWANIKI WANG'OMBE ..... 2<sup>ND</sup>**  
**PLAINTIFF**  
**VERSUS**  
**CREDIT BANK ..... 1<sup>ST</sup>**  
**DEFENDANT**

**COUNTER CLAIM**

**CREDIT BANK PLC ..... 1<sup>ST</sup>**  
**PLAINTIFF**  
**VERSUS**  
**SALVAGE SERVICES (2006) LIMITED ..... 1<sup>ST</sup>**  
**DEFENDANT**  
**PETER MAINA WANG'OMBE ..... 2<sup>ND</sup>**  
**DEFENDANT**  
**JENNIPHER WAMBUI WANG'OMBE ..... 3<sup>RD</sup>**  
**DEFENDANT**

**CAROLINE NANJALA OUNDA ..... 4<sup>TH</sup>**

**DEFENDANT**

**NJERU WA WANG'OMBE ..... 5<sup>TH</sup>**

**DEFENDANT**

**MARTIN MWANIKI WANGOMBE ..... 6<sup>TH</sup>**

**DEFENDANT**

### **JUDGEMENT**

1. The dispute herein is over property known as **Nakuru/Municipality Block 15/73 9** ("the suit property") that purportedly belonged to the Plaintiffs' deceased mother. It is averred in the suit that before her death the deceased (Agnes Nyagecheke Wang'ombe) had guaranteed a loan facility extended to Salvage Services (2006) Limited ("Salvage Services") by Equity Bank Limited with the suit property as security. The Plaintiffs understand that this loan has been fully repaid and therefore the suit property is no longer encumbered.
2. The Defendant bank ("Credit Bank") is accused of unlawfully further lending money to Salvage Services purporting that the suit property was security for the loan. The bank thereafter threatened to sell the suit property by public auction for alleged default of the borrowers,

provoking this suit. The Plaintiffs claim to have acquired ownership of the suit property by transmission from the Estate of their deceased mother.

3. The Plaintiffs in the premises seek these reliefs by plaint dated 9<sup>th</sup> February 2022;-

**1. The court do issue a temporary injunction in the interim and a permanent prohibitory order in the long term to restrain the defendant, its agents, servants, employees or others whosoever from advertising, offering for sale, auctioning, transferring, charging, leasing out, taking possession of, dealing in any other manner with property title number Nakuru Municipality/Block 15/73.(sic)**

**2. A mandatory injunction to compel the defendant, its agents, servants, employees or others whosoever to discharge and release from liability to the defendant the administrators of the estate of Agnes Nyagecheke Wangombe for any moneys advanced to Salvage Services (2006) Limited and discharge the Charge on property title number Nakuru/Municipality Block 15/73. (sic)**

**3. Costs of the suit together with interest at court rates.**

**4. Any other or further reliefs that this honourable court may deem proper to grant.**

4. Credit Bank filed defence dated 14/3/2022 traversing the claim of unlawful dealing in the suit property. It claims to have taken over the loan that had been granted to Salvage Services by Equity Bank Limited. On 8/5/2015, the same borrower also allegedly obtained a loan from Credit Bank and subsequently fell into arrears. According to the bank, it entered into the transaction with siblings of the Plaintiffs who are directors of Salvage Services. The Plaintiffs are accused of colluding with their siblings to fraudulently disown their deceased mother's guarantee of the loan offering the suit property as security.
5. For the stated reasons *inter alia*, the court is urged to dismiss the suit with costs.
6. On 31/3/2022 Credit Bank amended its Statement of Defence to introduce a Counterclaim against Salvage Services, the Plaintiffs in the main suit and their siblings stated as the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counterclaim.

It is contended in the amended Defence and Counterclaim that the Defendants therein fraudulently deceived the Credit Bank into advancing the loan to Salvage Services without disclosing that the loan guarantor was deceased at the material time. The Defendants to the Counterclaim are also said to have forged the deceased's signature on the loan documents, if indeed she was dead at the time.

7. In the premises Credit Bank as the Plaintiff in the Counterclaim wants the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Defendants in the Counterclaim to be personally found liable for amounts owed by Salvage Services. The following reliefs are sought in the Counterclaim;-

**a) A Declaration do issue that the Plaintiff holds an equitable charge over all that property known as Nakuru Municipality Block 15/73 and the Plaintiff is at liberty to proceed with the sale of the said property.**

**b) In addition to/in the alternative to A above, payment of the outstanding sum of Kshs. 9,322,355.35 (Kenya Shillings Nine Million, Three Hundred and Twenty-Two Thousand, Three Hundred and Fifty-Five and Thirty-Five**

**Cents as at 21<sup>st</sup> February, 2022 from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

**c) In addition to/in the alternative to A above , payment of interest on the sum in B above from 21<sup>st</sup> February, 2022 at the compounded rate of 13% from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants until settlement of the outstanding amount in full.**

**d) General and exemplary damages for fraud from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

**e) Costs of the original suit herein and the counter claim.**

8. The 1<sup>st</sup> Plaintiff testified reiterating the averments in their suit. Stating that he was also testifying on behalf of the 2<sup>nd</sup> Plaintiff, his brother, he denied existence of any commercial or other relationship between them and Credit Bank. Following demise of their mother the suit property was transmitted to them but they could not obtain a certificate of title because they learnt that Credit Bank was claiming a chargee's over the property. The only charge they were aware of was one in favour of Equity Bank Limited. The 1<sup>st</sup> Plaintiff told the court that he was not interested in any manner in Salvage Services. Their deceased mother's

purported charge of the suit property to the Credit Bank is said to be fraudulent since she had passed on at the time.

9. Under cross-examination by Credit Bank's Advocate, the 1<sup>st</sup> Plaintiff stated that Equity Bank Limited also falsely claimed that their deceased mother executed some charges in respect of the suit property. They have not sued that bank but chose to bring this case against the Credit Bank because it moved to auction the suit property.
10. The 1<sup>st</sup> Plaintiff conceded that their siblings are the directors of Salvage Services and beneficiaries of the loan from Credit Bank. According to the Plaintiffs, the Defendants to the Counterclaim failed to disclose the loan they took from Credit Bank.
11. The Bank's Legal Department Head testified and underscored the averments in the amended Defence and Counterclaim. He testified to advancement of the stated loan to the 1<sup>st</sup> Defendant in the Counterclaim with the suit property as security among other collateral. The parties' transaction involved Credit Bank taking over other loans

advanced to Savage Services' directors by Equity Bank Limited.

12. The witness further stated that sometime in the year 2020 Advocates for the Plaintiff's in the main suit sent to them the loan guarantor's death certificate. The guarantor had signed all the loan documents as witnessed by Advocates approached by her and the borrowers. Credit Bank thinks that the Plaintiffs in the main suit and Defendants to the Counterclaim are conspiring to defraud it after it called up the loan guarantee. The police have been approached to investigate the alleged fraud, the court was told.
13. The 2<sup>nd</sup> Defendant to the Counterclaim testified too. He confirmed that he and his relatives are directors of Salvage Services. The 2<sup>nd</sup> Defendant further confirmed that Credit Bank did advance a loan to them as claimed. The witness stated that they owe the bank only Kshs. 2,800,000 million as at the time of his testimony.
14. The 2<sup>nd</sup> Defendant to the Counterclaim concedes that their deceased mother could not have executed a charge in respect of a loan ostensibly advanced by Credit Bank in the

year 2011 since the deceased passed on two years earlier, in 2009. The witness said he did not know who purported to append the deceased's signature on the loan documents. The court is told that Credit Bank was informed of the deceased's death. The bank had not also been provided with the death certificate because it did not request for it. Credit Bank is faulted for carrying on with the transaction regardless of forgery of the deceased signature on the loan documents.

15. Learned Counsel for the parties filed written submissions which I have perused against the pleadings and evidence proffered. There is no dispute that the deceased did not execute the charge documents in question in favour of Credit Bank having died before the transaction. Her signature on the loan documents was therefore forged. It is also common ground that the directors of Salvage Services who benefitted from the loans are siblings of the Plaintiffs in the main suit. The parties further agree that there is default on repayment of the loan owed to Credit Bank .
16. The following issues arise for determination;-

- a) **Whether the Plaintiffs in the main suit have made out a case for grant of injunction reliefs sought.**
- b) **The orders commending themselves to the court in that suit.**
- c) **Regarding the Counterclaim, whether the defendants thereunder are personally liable to repay the Credit Bank's loan balance.**
- d) **What orders should be issued on the Counterclaim?**

17. I agree with Credit Bank that the Plaintiffs are not coming to the court of equity with clean hands ( See **Mrao vs First American Bank Limited & 2 Others (2003) eKLR** cited by Credit Bank which requires an Applicant for a discretionary order of injunction to demonstrate good *bonafides* to earn the court's discretion) . They knew that Salvage Services whose directors are the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counterclaim, took a loan from Credit Bank purporting to have been guaranteed by the deceased but chose not to sue them. They did not also join Equity Bank Limited which had lent money to Salvages Services on the deceased's purported guarantee too. In fact there is no mention of the fraudulent conduct of these parties in the

main suit. Credit Bank's evidence is that the loan documents were witnessed and/or attested by lawyers approached by the borrowers and so the bank could not tell if the loan guarantor was dead at the time. This fact was only known to the Plaintiffs in the main suit and their relatives, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counterclaim.

18. The above observations notwithstanding, to the extent that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counterclaim misrepresented to Credit Bank that the deceased executed a guarantee for the loan on offer yet she was dead at the time, the guarantee is null and void . I cannot accept Credit Bank's submissions that there was a valid "informal charge" created over the suit property in the circumstances.
19. I accordingly find in the affirmative that the Plaintiffs in the main suit have proven their claim on a balance of probability. They are entitled to the permanent and mandatory injunction reliefs they crave.

20. Regarding the counter claim, Credit Bank wants the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants therein to personally shoulder the debt in light of the fraud perpetrated against it. Indeed the court has found that they fraudulently conspired with their siblings to obtain the loan. The consequence is that the bank lost security that was a guarantee for the loan. This is a very serious fraud that exposes the bank to potential loss. I find the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to the Counterclaim personally, jointly and severally, liable for the outstanding debt due to Credit Bank.

21. Turning to the general damage claim, Credit Bank proposes an award of Kshs. 3,000,000/=. The Plaintiffs in the main suit make no submissions on this claim. On their part, the 1<sup>st</sup> - 4<sup>th</sup> Defendants to the Counterclaim think that the circumstances obtaining herein do not merit an award of general damages.

22. Superior courts have determined that general damages can indeed be awarded in fraud cases. In **Mikuro vs Moruri & 2 Others (2024) KEEL 5464 (KLR)** Kshs. 250,000/= general damages were assessed and awarded to a claimant

in a fraud case. In **Ndung'u vs Kenya Commercial Bank Limited (2025) KEEL 1162 (KLR)** Kshs. 300,000/= general damages was granted in similar circumstances.

23. Relative to the cited cases, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant to the Counterclaim perpetrated far more serious fraud that caused Credit Bank to lose a crucial loan security. The above cited cases are distinguishable in terms of the gravity of the fraud. I grant the bank Kshs. 1,500,000/= and Kshs. 500,000/= in general and exemplary damages respectively.

24. In the final analysis the court issues the following orders.

**Main suit**

**a) A permanent injunction issues restraining Credit Bank and/or its agents, servants, employees or anyone else whosoever from advertising, offering for sale, auctioning, transferring, charging, leasing out, taking possession of, or dealing in any other manner with property title number Nakuru Municipality/Block 15/73.**

**b) A mandatory injunction issues compelling Credit Bank, its agents, servants, or employees**

**whosoever to discharge and/or release the Plaintiffs from liability for any moneys advanced to Salvage Services (2006) Limited and discharge the Charge on property title number Nakuru/Municipality Block 15/73, within 2 (two) weeks from the date hereof.**

**c) Plaintiffs shall bear the costs of the suit.**

**Counter claim**

**a) The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants are adjudged personally liable to settle the debt owed to Credit Bank, and the bank is at liberty to call up any guarantees they had given for the loan. The court is, however, unable to direct them to pay a specific sum as the owed amounts are not sufficiently specifically pleaded on the body of the Counterclaim to enable the debtors to counter the same.**

**b) Credit Bank is entitled to interest on the amount found due as per prayer ( C) of the Counter claim.**

- c) Credit Bank is granted general damages and in the sum of Kshs. 1,500,000/= and a further sum of Kshs. 500,000/= in exemplary damages, all totaling to Kshs. 2,000,000/=.**
- d) Interest on (c ) is granted and shall be computed at court rates from the date of this Judgement.**
- e) The Plaintiffs in the main suit together with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to the Counterclaim will bear the costs of the Counterclaim.**

25. Judgement accordingly.

**J. M. NANG'EA - JUDGE**

**Judgement delivered virtually this 11<sup>th</sup> day of February, 2026.**

**In the presence of:**

**The Plaintiff's Advocate in the Main suit, Absent.**

**The Defendant's Advocate in Main suit & Counterclaim, Ms Maitai.**

**1<sup>st</sup> & 4<sup>th</sup> Defendants' Advocate in the Counterclaim, Mr. Njoroge for Mr. Mwangi.**

**The Court Assistant, Jeniffer.**

**J.M. NANG'EA - JUDGE.**