



**Karanja v Kanyaa (Environment & Land Miscellaneous Case
E021 of 2022) [2024] KEELC 20 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 20 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND MISCELLANEOUS CASE E021 OF 2022**

**JO OLOLA, J
JANUARY 19, 2024**

BETWEEN

PETER WANJOHI KARANJA APPLICANT

AND

PATRICK KIMUYU KANYAA RESPONDENT

RULING

1. By a Chamber Summons dated 28th March 2013, Peter Wanjohi Karanja (the Applicant) prays for orders that:-
 - (1) The property known as Title Number Kiine/Gacharo/3208 charged by the Charger/Respondent to the Chargee/Applicant under an informal charge dated 23rd March 2016, be sold to recover Kshs. 132,000/= and other expenses incurred in enforcing the contract and which is owing from the borrower to the Chargee/Applicant and interest thereof (sic);
 - (2) An order for vacant possession do issue over the property known as Title Number Kiine/Gacharo/3208 to enable the Chargee/Applicant to sell the suit property; and
 - (3) Costs of the suit.
2. The application which is supported by an affidavit sworn by the Applicant is premised on the grounds that:-
 - (i) Vide a letter dated 22nd March 2016, the Respondent at his own instance wrote to the Applicant to request for a soft loan of Kshs. 120,000/=;
 - (ii) In consideration of the letter, the Applicant and the Respondent entered into a loan agreement dated 23rd March 2016, whereby the Respondent received the soft loan and acknowledged receipt thereof;



- (iii) The Respondent in compliance with clause 3 of the agreement deposited the original title deed with the Applicant as a security for the loan;
 - (iv) The loan was to be repaid within eight (8) months from 30th April 2016 with a compound interest of Kshs. 12,000/=;
 - (v) The borrower has defaulted on the terms of the agreement and has been issued with a demand notice on 8th March 2022; and
 - (vi) Despite the notice, the Respondent has refused, failed and /or neglected to settle the loan.
3. Patrick Kimuyu Kanyaa (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 18th April 2013, the Respondent admits having entered into a soft loan agreement for the sum of Kshs. 132,000/= with the Applicant and surrendering his title over the suit property as lien.
 4. The Respondent however refutes the Applicant's contention that he has defaulted in repaying the agreed amount of Kshs. 132,000/=. It is the Respondent's case that he did repay the sum of Kshs. 32,000/= in the year 2017-2018 through mobile banking transactions to the Applicant's account. It is further his case that he paid a final sum of Kshs. 100,000/= vide a cheque drawn to the Applicant through the Respondent's company known as St. Patrick's Medical Services on 27th June 2019.
 5. The Respondent avers that he has had difficulty tracing the original mobile banking transactions and requests the court for more time to do so. In the alternative, the Respondent asserts that he is willing to pay the sum of Kshs. 32,000/= on condition that the informal charge be discharged and that his title be handed back to him.
 6. I have carefully perused and considered the Chamber Summons application as filed by the Applicant as well as the response thereto by the Respondent. I have similarly perused and considered the submissions filed in court by the Learned Advocates representing the parties.
 7. By the application before me, the Applicant who also refers to himself as the Chargee urges the court to order that the property known as Title No. Kiine/Gacharo/3208 be sold to recover an amount of Kshs. 132,000/= said to be owing from the Respondent to the Applicant. In addition, the Applicant urges the court to order the Respondent to grant vacant possession of the said property to enable the Applicant to sell the same.
 8. Those prayers arise from the Applicant's contention that some time on 23rd March 2016, he entered into a loan agreement with the Respondent wherein he advanced a sum of Kshs, 120,000/= to the Respondent. Under the terms of the said agreement which is attached to the Applicant's Supporting Affidavit, the Respondent was required to pay back the loan together with an interest of Kshs. 12,000/= . It is the Applicant's case that the Respondent has now defaulted in repaying the loan and that he should be allowed to sell the suit property which was deposited with him as security.
 9. As it were, the Respondent does not deny entering into the loan agreement with the Applicant. It is however his case that he has repaid the amount in full having paid a sum of Kshs. 32,000/- through mobile banking transfers and a balance of Kshs. 100,000/= through a cheque which he has annexed to his Replying Affidavit.
 10. It was interesting to note that by way of a further affidavit filed in reply to the Respondent's Replying Affidavit, the Applicant admits to having received the said sum of Kshs. 100,000/= paid through the Respondent's firm known as St. Patrick's Medical Services. It is however, the Applicant's case that the said payment was for medical equipment supplied to the Respondent as per a copy of "an invoice" annexed to the further affidavit.



11. I have looked at the so-called invoice and it was clear to me that it is a mere piece of paper that could have been generated by anyone. It does not give much explanation as to who the Applicant is and how he came to supply the Respondent with the said medical equipment. It has all sorts of crossings and additional writings made by pen after the original document was printed. Indeed I was unable to find any mention of the sum of Kshs. 100,000/= among the prices cited for various items and it was clear that it is a document that requires lots of elaborations.
12. While that could be done through the process of further discovery and/or at the trial, that won't be possible in this case. I say so because this matter was instituted in court in a rather misguided manner. There is neither a Complaint herein nor an Originating Summons upon which the Chamber Summons before me is hinged.
13. All that the Applicant did was to move to court by a Miscellaneous Civil Suit on 22nd November 2022, whereupon he filed his Chamber Summons application dated 15th November 2022. Apparently having realized some anomalies in the initial Chamber Summons, he filed a Notice withdrawing the same on 31st March 2023. On that same day he filed a fresh Chamber Summons application currently before me for consideration.
14. As a general rule, a suit can only be instituted by way of a Complaint, a Petition or an Originating Summons. A Chamber Summons application is not in my mind an Originating process more so where one is seeking final orders as sought herein. A Chamber Summons can only be filed for temporary relief within a properly instituted suit.
15. It follows that I find the Chamber Summons application before me completely misconceived and incompetent. It is hereby accordingly struck out with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF JANUARY, 2024.

In the presence of:

Ms. Wandia for the Applicant.

No appearance for the Respondent.

Court Assistant: Kendi

J. O. OLOLA

JUDGE

