



Times U Sacco Society Limited v Igweta & another (Environmental and Land Originating Summons E006 of 2023) [2024] KEELC 7560 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEELC 7560 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2023
CK YANO, J
NOVEMBER 14, 2024**

BETWEEN

TIMES U SACCO SOCIETY LIMITED PLAINTIFF

AND

NURU KITHINJI IGWETA 1ST DEFENDANT

LUDIA KAINDA & PAULINE NKURUGUCHU M'TWAMARI (SUED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THURUAINI MWITARI ALIAS THIRWAINI MWITARI) 2ND DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit by way of the originating summons dated 21st August 2023 claiming to have become entitled to ownership of land Parcel No. Nyaki/Chugu/234 by way of interest as a creditor. The plaintiff sought for determination of the following questions;
 1. Whether the plaintiff has acquired part title to land Parcel number Nyaki/Chugu/234 by way of interest as a creditor.
 2. Whether an order for transfer of part of the land parcel number Nyaki/Chugu/234 in favour of the plaintiff should issue equivalent to what was secured through the security for the loan facility?
 3. Should the defendants be compelled to execute documents for transfer of title to the parcel number Nyaki/Chugu/234 to the plaintiff and in default the Deputy Registrar of this Honourable Court be authorized to do so?
 4. What is the order as to costs.
2. The summons is supported by the affidavit of Catherine K. Mwamba sworn on 21st August, 2023.



3. Despite being served with the summons to enter appearance as well as the pleadings, the defendants neither entered appearance nor filed defence. The matter proceeded for formal proof hearing on 13th February, 2024.
4. The plaintiff called one witness, Catherine K. Mwambi (P.W 1) who adopted her witness statement dated 21st August, 2023 which is the affidavit in support of the Originating Summons. P.W 1 testified that she was the Chief Executive Officer of the plaintiff herein. She stated that the 1st defendant applied for a loan from the plaintiff on 17th August 2017 and supplied as collateral title deed for Land Title Number Nyaki/Chugu/1021 which is a subdivision of land title number Nyaki/Chugu/234. That the plaintiff accepted the title deed to the suit land after conducting due diligence and confirming that the land genuinely belonged to the 1st defendant who had purchased the same from the 2nd defendant.
5. P.W 1 testified that unfortunately for the plaintiff, the High Court in Meru Succession cause No. 305 of 2008 delivered a judgment on 14th December 2020 through which judgment, all resultant sub-divisions of land title number Nyaki/chugu/234 were cancelled. That this left the plaintiff exposed since it had no security for the loan advanced to the 1st defendant. That from the said judgment, it is evident that the 2nd defendant has perpetuated the fraud which led to the cancellation of the sub-divisions resulting from Nyaki/Chugu/234.
6. According to P.W 1 the High Court in Meru Succession cause No. 305 of 2008 did recognize that the plaintiff as well as other parties have interest in part of the deceased's estate and stayed the implementation of its orders for thirty days to allow parties such as the plaintiff herein to lodge whatever claims they may have.
7. P.W 1 testified that the 1st defendant has since stopped servicing the loan disbursed by the plaintiff which at the time of filing the suit stood at Kshs. 2,686,104.00. That based on the High Court's judgment, the plaintiff is left holding onto a worthless paper with no security to the loan advanced to the 1st defendant. P.W 1 stated that it is only fair that the court appreciates the plaintiff as a bonafide creditor and innocent of any subsequent dealings and to order for recovery of its security from the estate. The plaintiff therefore prays for the part of the land Parcel No. Nyaki/Chugu/234 to be transferred to it that comprises the part where the 1st defendant has put up a building which let the value of the parcel held in his name to be high, thus informing the loan amount disbursed to them. P.W 1 produced the annexures attached to the supporting affidavit as exhibits, and they include a board resolution dated 11th August 2023, a copy of the loan application form, a copy of the title deed for the suit property, a copy of appraisal form, a copy of official search for the suit property, a copy of the loan agreement dated 23rd August 2017, a copy of the judgment in Meru High Court Succession Cause No. 305 of 2008, a copy of the 1st defendant's loan statement, a copy of the charge documents and a copy of a notice dated 11th June 2018.
8. The plaintiff filed written submissions dated 29th February, 2024 through the firm of Mutuma & Koskei advocates wherein they gave a summary of the case and evidence. The plaintiff's counsel cited the provisions of Order 37 Rule (1) (a) of the Civil Procedure Rules under which the Originating Summons is brought. They also quoted paragraph 25 of the judgment in High Court Succession Cause No. 305 of 2008 in which the court directed the plaintiff herein to pursue their claim before this forum. The plaintiff's counsel also relied on the case of Mamta Peeush Mahajau (suing on behalf of the estate of the late Peeush Premal Mahajan) Vs Yashwant Kamari Mahejau (sued personally and also executrix of the estate and beneficiary of the estate of the late Krishan Lal Mahajan [2017]eKLR and Talewa Road Contractors Limited & another Vs Jamii Bora Charitable Trust Registered Trustees & another. It is submitted that the plaintiff has provided ample evidence with respect to its claim and the court



was urged to make a finding that not only is the evidence by the plaintiff uncontroverted but that the plaintiff has proved its case to the required standards.

9. Having considered the pleadings, the evidence on record and the submissions, the issue for determination is whether the plaintiff is entitled to the reliefs sought and costs.
10. From the evidence on record, there is no dispute that the 1st defendant applied for a loan from the plaintiff on 17th August 2017. The 1st defendant supplied a title deed for land title number Nyaki/Chugu/1021 which is a subdivision of title number Nyaki/Chugu/234 as collateral. The plaintiff accepted the said title after conducting due diligence and disbursed the loan to the 1st defendant. The High Court in Meru Succession cause No. 305 of 2008 pursuant to an application dated 29th October, 2018 delivered a judgment dated 16th December, 2020 ordering among others that land title number Nyaki/Chugu/234 was to revert to the deceased. In that judgment, the High court did recognize that the plaintiff as well as other parties have interests in part of the deceased's estate. Indeed, the court stayed the implementation of its orders for 30 days to allow parties such as the plaintiff to lodge whatever claims they may have. Pursuant to that, the plaintiff filed the instant suit.
11. It is evident that the defendants herein were served with summons to enter appearance and pleadings. They did not however, enter appearance nor file defence. The plaintiff's suit is therefore undefended. However, even if the suit is not defended, the plaintiff still has the duty to formally prove their case on a balance of probabilities as required by law.
12. In this case, the plaintiff adduced evidence, including documentary evidence, to support that there was an application made by the 1st defendant to be advanced a loan by the plaintiff and which was infact advanced. The 1st defendant gave a title of the suit property as collateral. Whereas that title was later cancelled by an order of court in the succession cause, and the land ordered to revert to the deceased, the court in the succession cause recognized that some parties including the plaintiff had interest in the said land. The court even went ahead to stay the implementation of its orders to allow such parties as the plaintiff to lodge their claim. In this case, the defendants did not tender any evidence to counter and or controvert the testimony of P.W1. The plaintiff's evidence was not rebutted and remains uncontroverted. The plaintiff pleaded and tendered evidence to support their claim.
13. Consequently, it is my finding and I so hold that the plaintiff has proved its case on a balance of probabilities. My answer to the 1st, 2nd and 3rd questions for determination in the Originating Summons dated 21st August 2023 are in the affirmative. Accordingly, judgment is entered for the plaintiff against the defendants as prayed. The plaintiff will also have the costs of the suit.
14. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF NOVEMBER, 2024.

In The Presence Of

Court assistant- Tupet.

Mutuma for plaintiff

No appearance for defendant

C.K YANO

ELC JUDGE

