



REPUBLIC OF KENYA



**Ragi v Kenya Women Microfinance Bank PLC (KWFT) (Civil Suit E593 of 2021)
[2024] KEHC 7850 (KLR) (Commercial and Tax) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E593 OF 2021
JWW MONG'ARE, J
JUNE 27, 2024**

BETWEEN

ALLAN GACHIRI RAGI PLAINTIFF

AND

KENYA WOMEN MICRO FINANCE BANK PLC (KWFT) DEFENDANT

RULING

1. The Notice of Motion dated 21st February filed by the Plaintiff seeks orders that the court to review and or set aside order No. (a) of its ruling made on the 8th June 2021 declining to grant an injunction restraining the Respondent from disposing of the Plaintiff's suit property known as Title No. Ngong/Ngong/35216.
2. In the alternative, the Court to review its orders dated 1st November 2023 and issue orders as prayed in the Application dated 30th December 2021 accordingly. In addition, the Court to grant an injunction restraining the Defendant/Respondent either by itself, its agents, employees and or servants from advertising for sale, selling, auctioning or otherwise disposing off the Plaintiff's property known as Title No. Ngong/Ngong/35216.
3. This Application was supported by the grounds on the face of it and by the sworn Affidavit of Allan Gachiri Ragi who stated that the Plaintiff has since discovered that Clause 7.3 of the Addendum letter of offer dated 31.10.2017 which was signed between the Plaintiff and the Defendant herein, provides that in the event of the death of either the Plaintiff or the guarantor, the insurance was to pay the entire loan. The guarantor to the loan, namely Susan Njambi Gachiri passed away on 14th January 2021 and the same was notified to the Respondent.
4. That the loan therefore, should have been settled by the insurance that had been take out by the Respondent by virtue of the death of the guarantor; whose premiums indeed the Plaintiff paid.



5. The Applicant added that the said Addendum Letter of Offer, could not be adduced at the time the orders dismissing the application for injunction were made, as the same was not in possession of the Applicant at the time of making the application because most of the documents had been kept by the said late Guarantor, who happened to be the Applicant's wife, and only came to trace it after a long search among the said late guarantor's many documents.
6. *Vide* the Replying Affidavit dated 5th March 2024, the Respondent responded to the Application stating that the Application is res judicata as the Applicant had filed numerous applications previously seeking the same injunctive prayers to restrain the bank from selling the subject property. Further, that the present Application has re-introduced similar grounds and issues seeking the same orders of injunction while conveniently including orders for review.
7. The parties subsequently filed written submissions which the court has carefully considered alongside the Application as well as the Response. The court now frames the following issue for determination:-
 - a. Whether the Court should review and/or set aside order No. (a) of its ruling made on the 8th June 2021?
8. The Applicant herein seeks to review order No. (a) of the Ruling dated 8th June 2021 in which the court declined to issue an interim injunction restraining the Defendant from disposing off the Plaintiff's property by way of an auction scheduled on 8th June 2021.
9. It is trite law that this Court has a power of review, but such power must be exercised within the framework of Section 80 of the Civil Procedure Act and Order 45 Rule 1. Thus, the statutory grounds upon which orders for review can be obtained are; firstly, there ought to exist an error or mistake apparent on the face of the record. Secondly, that the Applicant has discovered a new and important matter in evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. Thirdly, that there is sufficient reason to occasion the review.
10. In the instant case, the Applicant herein sought review on the grounds that he had since discovered that Clause 7.3 of the Addendum letter of offer dated 31st October 2017 which was signed between the Plaintiff and the Defendant, provides that in the event of the death of either the Plaintiff or the guarantor, the insurance was to pay the entire loan.
11. While the Applicant maintains that the Addendum letter of offer dated 31st October 2017 was not within his knowledge, the Respondent's contended that the Plaintiff had relied on the issue of credit life policy in an application filed 2 years ago dated 1st February 2022 where the Plaintiff stated that he had discovered the addendum letter of offer provided that insurance was to pay the balance since his wife passed away.
12. This then begs the question, is this new evidence and can it entitle the Applicant to apply for a review? In the case of Rose Kaiza -vs- Angelo Mpanjuiza [2009] eKLR, the Court of Appeal considered an application for review on the ground of new evidence and held that it is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.
13. In light of the above arguments, the court has perused the impugned Ruling and at par. 45 of the said Ruling it is evident that the Applicant herein relied on the Addendum to offer letter dated 30th October 2017. It is therefore the court's considered view that the existence of the said Addendum letter of offer was within the knowledge of the Applicant and he cannot now claim to have had no knowledge of one particular clause, that is Clause 7.3, yet he relied on this very document.



14. The upshot is that this court is satisfied that the Application does not meet the threshold for review set out as under the provisions of Section 80 of the Civil Procedure Act and Order 45 Civil Procedure Rules. The Application is found to be devoid of merit and it is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JUNE, 2024.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. No appearance for the Plaintiff/Applicant.
2. No appearance for the Defendant.
3. Amos - Court Assistant

