



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO.649 OF 2008

CITY COUNCIL OF NAIROBI.....PLAINTIFF

VERSUS

JOKAMU HOLDINGS LIMITED.....1ST DEFENDANT

STANDARD CHARTERED BANK (K) LTD.....2ND DEFENDANT

RULING

1. Before me is a Notice of Motion dated 20th December 2018 filed by the 2nd defendant, Standard Chartered Bank of Kenya Limited. The order sought by that application is for judgment to be entered in favour of the 2nd defendant against the 1st defendant, Jokam Holdings Limited.

BACKGROUND

2. This case was filed by City Council of Nairobi against Jokamu Holdings Limited the 1st defendant and Standard Chartered Bank (K) Limited. City Council of Nairobi sought a declaration that the legal charge over its property L.R No 17338 (herein after the property) be declared null and void.

3. This was a classic case of land grab. On the property was a health clinic for members of the public. The 1st defendant, without any semblance of any legal right, lay claim of absolute ownership of that property. The 1st defendant sought to evict the staff of the plaintiff who were housed on that property. He even filed a suit for their eviction being HCCC 114 of 2001. Fortunately he did not succeed, he found formidable opposition in the plaintiff's staff. From the affidavits filed in that case it becomes very clear that the 1st defendant metted out violence against the members of staff with a view to evicting them. It was in the midst of all that illegal activity that the 2nd defendant registered a charge over the property and allegedly granted the 1st defendant a loan.

4. As I stated before I delivered my judgment in this matter on 29th November 2018. This court found the 2nd defendant culpable on the issue relating to the illegal land grab. This is what the court stated in its said judgment:

22. *"The 2nd Defendant, through its witness, evidence in chief stated that the 2nd Defendant carried out all due diligence before accepting the property as security. That witness failed to inform the Court what exactly the due diligence exercise entailed. All he said was that the 2nd Defendant confirm the 1st Plaintiff was the registered owner and that it had receipts representing its payments for rates, land rent and clearance certificate.*

23. *As it will be seen from the affidavit reproduced above there were people in occupation of the property. It follows that had the 2nd Defendant carried a visit on the land, it would have confirmed that there was a dispute over the ownership of the very land that 1st Defendant offered as security. The fact that the 2nd Defendant did not find out that there was any such dispute would suggest that it did not even carry out a valuation to confirm that the property was worth the money loaned. If such a valuation would have been carried out, again, it would have revealed the deep seated dispute over the alleged ownership of the property by the 1st Defendant.*

24. *On consideration of the entire evidence adduced it becomes very clear that the 2nd Defendant, although in its defence pleaded that it is a responsible corporate citizen, on this occasion it failed the test miserably. How else can the 2nd Defendant explain having received a title, as security over a property where a public health centre is run and members of its staff reside? The 2nd Defendant will, in this case, have to pay the consequences of its failure by having the charge declared null and void.*

25. Having found that the charge shall be declared null and void the only other order that this Court can make is to order there be a discharge.”

5. The 2nd defendant now seeks judgment to be entered in its favour against the 1st defendant for the amount it loaned the 1st defendant, that is Ksh 6,560,330.10 with interest from 23rd February 2002.

ANALYSIS

6. The 2nd defendant did not prove by evidence at the trial in regard to the notice of indemnity against 1st defendant more importantly it did not prove service of that indemnity and to now attempt by the present application to prove indemnity was served will not be countenance by this court.

7. But perhaps the failure of the 2nd defendant to counterclaim against the 1st defendant will lead to this court not entertaining the application for judgment. It was not enough to plead in the defence for judgment because a defence offers a defence to a claim but a party wishing to make a substantial claim, as the 2nd defendant did, it ought to have filed a counter claim.

8. For the above reasons the application fails. It is dismissed with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 27th day of APRIL, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **27th** day of **April, 2020**.

MARY KASANGO

JUDGE