



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**

**CIVIL CASE NO. E213 OF 2019**

**KULWAT KAUR DHARIWAL .....PLAINTIFF**

**VERSUS**

**ADM CONSULTING LIMITED.....1<sup>ST</sup> DEFENDANT**

**ASHVINDER KAUR MANN.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT (ON FORMAL PROOF)**

1. The plaintiff herein **KULWAT KAUR DHARIWAL** sued the defendants through a plaint dated 27<sup>th</sup> June 2019 seeking the following orders:-

- i. Declaration that the 1<sup>st</sup> defendant is a Principal Debtor and is obligated to indemnify the plaintiff as Guarantor for the full amount owed being Kshs 122,000,000/-.*
- ii. Order of indemnification of Kshs 122,000,000/- against the 1<sup>st</sup> defendant.*
- iii. General damages.*
- iv. Costs of the suit and interest thereof; and*
- v. Further or any other relief that Honourable court may deem fit to grant.*

2. The plaintiff's case is that she was at all material times the proprietor of the LR No. 209/8000/188 (hereinafter "**the suit property**") which was also her matrimonial home and that on 15<sup>th</sup> June 2012, she agreed to be a guarantor of the 1<sup>st</sup> defendant by offering the said property as security for a loan of Kshs 43 million which the 1<sup>st</sup> defendant obtained from I & M Bank. The 1<sup>st</sup> defendant however failed to repay the said loan thereby leading to the sale of the suit property to recover the said debt.

3. At the hearing of the case on formal proof, PW 1 **Mr. Mohan Singh Dhariwal**, the plaintiff's husband, testified that he witnessed the signing of the guarantee agreement by his wife the plaintiff herein, who was also present in court. A copy of the guarantee agreement was produced as an exhibit in court being annexure No. 4 to the plaintiff's list of documents.

4. A copy of the charge document dated 3<sup>rd</sup> July 2012 in respect of the suit property was also produced as annexure No. 1 in the plaintiff's list of documents. PW1 testified that the 1<sup>st</sup> defendant did not service the loan as agreed thereby resulting in the foreclosure and sale of the suit property on 28<sup>th</sup> May 2019.

5. It was the plaintiff's case that the suit property was as at 21<sup>st</sup> March 2019 valued at 100 million as shown in the valuation report produced as annexure 5 to the list of documents. The plaintiff's case was that she also paid to the bank the sum of Kshs. 22 million in a bid to forestall the sale of the suit property but that the sale still went on as already stated in this judgment. The witness produced copies of banker's cheques in support of the said payment of the sum of Kshs 22 million as shown in annexure No. 7 in the plaintiff's list of documents.

6. I have considered the pleadings herein, the testimony of PW1 together with the list of documents filed in court on 5<sup>th</sup> July 2019. I am satisfied that the plaintiff has proved her claim against the defendants herein on a balance of probabilities.

7. Consequently, I allow the plaintiff's claim and enter judgment for the plaintiff against the 1<sup>st</sup> defendant as follows:

*i. Declaration that the 1<sup>st</sup> defendant is a Principal Debtor and is obligated to indemnify the plaintiff as Guarantor for the full amount owed being Kshs 122,000,000/-.*

*ii. An order that the 1<sup>st</sup> defendant pays the sum of Kshs 122,000,000/- to the plaintiff.*

*iii. Interest on (ii) and (iii) hereinabove at court rates.*

It is so ordered.

**Dated, signed and delivered in open court at Nairobi this 30<sup>th</sup> day of September 2019.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Korir for the plaintiff

Court Assistant - Otieno