



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**

**HCC. NO. 3 OF 2016**

**STANLEY NJOGU KARARI T/A**

**MONACO ENGINEERING LIMITED.....PLAINTIFF**

**VERSUS**

**STANDARD CHARTERED BANK KENYA LIMITED.....DEFENDANT**

**RULING**

1. It is apparent that the Plaintiff's Notice of Motion dated 12<sup>th</sup> August 2016 is an invitation to the Court to revisit the Ruling of Kariuki J. delivered on 6<sup>th</sup> July 2016 in a manner not contemplated by the Law.

2. The Notice of Motion seeks the following substantive Prayers:-

2. THAT this Honorable court pending the hearing and determination of this Application do grant Orders immediately stopping the further attraction of interests rates or restraining the Respondents/Defendants, their Representatives, Servants and/or Agents from imposing any further interest upon the Applicant/Plaintiff, on the suit account.

4. THAT this Honourable Court be pleased, pending the hearing and determination of the suit, to grant an order restraining Mucheru-Oyatta & Associates Advocates from instructing auctioneers to move to auction the security property account of loan default.

5. THAT this Court be further pleased to make a Declaration that the Respondent/Defendants in circumventing relevant Statutory instruments fundamentally breached the Succinct terms and conditions cited in the Facility Agreement entered into with the applicant/Plaintiff in so far as interest rates and the posting of accurate statements of Accounts are concerned.

6. THAT this Honourable Court be pleased to make the requisite Orders in respect of the Costs of this Application.

3. Looking at the Grounds in support of the Motion, the Plaintiff's Chief complaint is on the Rate of Interest charged by the Defendant Bank on the facility granted to him and the manner in which the interest was worked out. That was also the complaint and argument raised previously before Kariuki J. in the Application of 6<sup>th</sup> January 2016 and to which the learned Judge answered:-

“14. From the foregoing, it would deduced that the parties were at all times in communication with

regards to the facility of 24<sup>th</sup> September 2014. Any queries that the Applicant may have had were appropriately responded to by the Respondent, and that any error in calculation of interest had been addressed sufficiently. It was therefore, imperative and encumbered upon the Applicant to diligently repay the loan facility. Nonetheless, it would seem that they failed in this contractual endeavour and sought to bring up unsubstantiated issues with regards to erroneous loan computations and loss of business, which in any event, cannot be imputed upon the Respondent, but rather on its ineptitude and callousness”.

4. The Defendants Bank therefore puts forth a valid argument that the present application raises matters already determined in the Ruling of 6<sup>th</sup> July 2016.

5. And the Plaintiff/Applicant does not disguise his invitation to me to sit on appeal over the decision of Kariuki J. Look at Ground (d) of the application which states:-

d) The Court in, its ruling erred in fact and law by stating that the issue was triable notwithstanding that the Plaintiff/applicant plunged into substantial loss as a result of breach of agreement.

I am afraid that this Court cannot sit on Appeal over a decision of a Court of concurrent jurisdiction.

6. The reason why the Applicant took this approach is revealed, I think, in paragraphs 5 and 6 of his affidavit of 12<sup>th</sup> August 2016 sworn in support of the Application now before Court. He depones:-

5. THAT to my utter shock and disappointment the aforesaid file contained the ruling mysteriously disappeared and despite frantic efforts to retrieve the same with assistance of the staff at the registry it proved futile.

6. THAT I am advised by my Advocates on record which advice I verily believe to be true and factual that the disappearance of the file amounts to mischief and questions the basis of the ruling. It took the intervention of the Deputy Registrar for the file to be retrieved.

7. If indeed the missing file frustrated the Plaintiff from mounting an Appeal timeously, then the proper course would have been for the Plaintiff to seek extension of time for the filing of an appeal out of time. It may not help to ‘Appeal’ the decision through an Application because the Law does not contemplate that procedure nor does it empower this Court to sit on appeal over a decision of a Court of equal jurisdiction.

8. The Notice of Motion dated 12<sup>th</sup> August 2016 is hereby dismissed with costs.

**Dated, Signed and Delivered in Court at Nairobi this 30<sup>th</sup> day of March, 2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Muthoni h/b for Oyieko for Plaintiff

Fraser for Defendant

Alex - Court Clerk