



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

**CIVIL SUITNO. 416 OF 2012**

**BENSON KABUGI MURIUKI.....PLAINTIFF**

**VERSUS**

**AGRICULTURAL FINANCE CORPORATION.....DEFENDANT**

**RULING**

1. The instant matter is coming up for directions.
2. The background of the case is that the Plaintiff applied for a loan facility from the Defendant of Kshs. 592,000/= for purposes of dairy farming. The same was to be repaid together with interest at the rate of 10% within a period of 5 years according to the letter of offer dated 9<sup>th</sup> January, 2004.
3. A charge over the piece of land known as Nyeri/Warazo/124 was registered in the Plaintiff's name was created in favour of the defendant. A dispute arose as to the payment of the said facility, prompting the Defendant to attempt disposal of the aforementioned property. In a bid to stop the same, the Plaintiff filed the instant suit vide a Plaint dated 26<sup>th</sup> June, 2012.
4. In paragraph 10 and 11 of the Plaint, the Plaintiff alleges that he commenced repayment of the loan on 2<sup>nd</sup> April, 2004 and has repaid the full amount, a position that the Defendant disputes.
5. Further to this, the Plaintiff claims that the Defendant deviated from the terms contained in the letter of offer and imposed unexplained charges on the loan account. The Defendant also disputed this assertion in its statement of Defence.
6. The matter came up for hearing on 6<sup>th</sup> May, 2015, where the Plaintiff adopted his statement as evidence in chief. The Defence Counsel Mr. Rashid commenced the cross examination on the Plaintiff.
7. During the cross examination of the Plaintiff, the question as to when he (the Plaintiff) was required to commence repayment of the borrowed amount, when repayment commenced and whether the loan was repaid in accordance with the terms of the loan, arose. The Parties took varied positions with regard to these issues. **Gikonyo J**, then directed the respective parties learned counsels to attempt to resolve these issues within 21 days.
8. When the matter came up for hearing on 2<sup>nd</sup> June, 2015, the parties by consent agreed to file written submissions on the following two issues;
  - i. *When was the repayment of the loan in question to commence as per the agreement of the parties?*
  - ii. *Was there any default of the loanee?*
- ix. The Plaintiff filed his submissions on 2<sup>nd</sup> November, 2015, while the Defendant filed its submissions on 28<sup>th</sup> September, 2015. I have considered the arguments by the respective parties.

The following is my view on the matter.

- x. With regard to when the repayment of the loan was supposed to commence, I had the opportunity to look at the letter of offer clause 2 as read together with clause 8 of the letter of offer dated 9<sup>th</sup> January, 2004. Clause 2 states thus;

**“2. FURTHER TERMS AND CONDITIONS of this offer shall be:-**

***TO SIGN A BANKERS ORDER OF KSHS. 14, 850.00 PER MONTH ON ACCEPTANCE OF THE LOAN OFFER”***

11. Further clause 8 stated as follows;

***“8. The loan shall be repaid together with the prescribed interest calculated as each sum on account of the loan in a manner provided in Clause (6) above by equated \*Annual/Half Yearly/Quarterly/Monthly payments of principal and interest combined, the first to be made on the .....28<sup>th</sup> .....day of .....February.....2005.” (emphasis added)***

12. Thus from the above clause, it is clear that the first repayment was to be made on 28<sup>th</sup> February, 2005. As to whether the first installment was made within the prescribed time, is in my view an issue to be tackled by the court at the judgement stage after all the evidence has been tested.

13. With regard to the second issue which concerns whether or not there was default on the part of the loanee, I have looked at the submissions of the respective industrious learned counsel.

14. It is clear that the issue of repayment is highly contested. On the one hand, the Plaintiff avers that he paid the loan as required by the terms of the letter of offer, while the Defendant obviously denies this position.

15. According to its submissions, the Defendant contended that from the statement of account, it is clear that the Plaintiff made payment at his pleasure and/or under coercion. That on 2<sup>nd</sup> April, 2004 he paid Kshs. 14,850/= and a similar amount on 3<sup>rd</sup> June, 2004.

16. That the next time there was repayment of Kshs. 20,000/= was on 18<sup>th</sup> February, 2005 approximately 8 months later.

17. Whether this is the true position or not, the court cannot determine at this stage. The Plaintiff is yet to be cross examined fully especially with regards to the dates in which he allegedly made the repayments as per the statement of account.

18. Further the veracity of the statement of account referred to are yet to be tested through the testimony of any defence witnesses.

19. As such, it is my view, that making a summary determination at this juncture would not only be pre-empting the parties' respective cases but the court would also be analyzing affidavit evidence when it was quite clear to the court that there are weighty and triable issues that would require to be ventilated in a full trial.

20. In sum, it is the court finding that the question as to whether there was any default by the loanee is best suited to be determined by the court during the judgement stage.

21. It is so ordered.

**Dated, signed and delivered in court at Nairobi this 23<sup>rd</sup> day of March, 2016.**

**C. KARIUKI**

**JUDGE**