



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

CIVIL SUIT NO. 523 OF 2012

CHRISTINE KANGE OUNDO

FREDRICK N. WAMALWA.....PLAINTIFFS

- VERSUS -

C F C STANBIC BANK LIMITED.....DEFENDANT

JUDGEMENT

1. The plaintiffs, **CHRISTINE KANGE OUNDO** and **FREDRICK N. WAMALWA** have sued the defendant, **CFC STANBIC BANK LIMITED**, for the following relief;

“a) A declaration that full redemption moneys due under the loan agreement between the Defendant and the 1st Plaintiff have been paid to give effect to the said declaration ordering delivery up the Defendant to the plaintiffs the Hire Purchaser agreement and the guarantee by the 2nd plaintiff, statements of all transaction in the loan account, Log-Book for motor vehicle KBH 733 Q and transfer thereof duly executed in duplicate in favour of the 1st plaintiff or her nominee and the 3rd Blank Transfer Forms in the possession of the Defendant executed at the outset by 1st plaintiff and order permanently restraining the Defendant by itself its servants or agents from repossessing or howsoever removing the motor vehicle registration number KBH 733 Q from the plaintiffs their servants or agents and an order for payment to the plaintiff’s fundamental consumer rights?.

2. Apart from that relief, the plaintiffs asked the court to make further or other orders which were deemed to meet the ends of justice.

3. Finally, the plaintiffs prayed for the costs of the suit.

4. In its defence, the bank asked the court to strike out the 2nd plaintiff’s claim. The first reason for that request was that there was no contract between the 2nd plaintiff and the bank. Secondly, the bank asserted that the plaint did not disclose any cause of action, by the 2nd plaintiff, against the bank.

5. The defendant also insisted that the original Hire Purchase Agreement, in respect to the motor vehicle **KBH 733 Q** was provided to the 1st plaintiff on 8th June 2009.

6. The said Agreement was said to contain a complete repayment schedule in respect to the facility which

the bank had accorded to the 1st plaintiff (*hereinafter* “Christine”).

7. The defendant’s position was that Christine was required to remit payments every month, and that the repayment schedule specified the balance which would be outstanding after each payment.

8. In the light of the repayment schedule, the bank’s position was that it was only obliged to apply the specified payments on the dates specified in the schedule.

9. It was the bank’s position that at no time did Christine give to the bank any instructions which were inconsistent with the repayment schedule.

10. Therefore, in the absence of any express instructions from Christine, the bank asserted that it was obliged to apply any payments received by it, in the manner specified in the repayment schedule.

11. On her part, Christine insisted that she did write to the bank, and that she also visited the bank, personally.

12. However, the bank denied the plaintiffs’ contentions, concerning the visitations and other communications which allegedly took place between Christine and the bank.

13. The bank also pointed out that it was never served with a Notice prior to the institution of the suit.

14. Finally, the bank said that it was entitled to repossess the vehicle, because the said vehicle had never been paid for in full.

15. During the trial, Christine testified in support of the plaintiffs’ claim, whilst Hamilton Suba testified on behalf of the defendant.

16. The 2nd plaintiff did not testify.

17. Christine testified that the bank wrote to her on 8th June 2009, offering her a Hire Purchase Agreement.

18. Christine also confirmed that she received the repayment schedule. But she later clarified that what she got was a “*Loan Contract Advice – Term Loans*” document. In other words, she did not receive the repayment schedule.

19. When asked whether or not she asked the bank to give her the repayment schedule which had been mentioned in the bank’s offer letter, Christine answered in the negative. She said that she did not need to ask for it because she had signed a Standing Order.

20. It was her testimony that by signing the Standing order she was instructing the Standard Chartered Bank to debit her account to the tune of Kshs. 40,348/-, which they would then pay to the defendant every month.

21. It was the understanding of Christine that by signing the Hire Purchase Agreement with the defendant, she expected the defendant to pay money to Toyota Kenya, towards the purchase of the vehicle which Christine was buying.

22. In order to pay Toyota Kenya, the defendant had to open a Loan Account for Christine. The money which the bank paid to Toyota Kenya would be debited against Christine’s Loan Account.

23. However, Christine insisted that the defendant never informed her that it would also open a repayment account for her.

24. In the year 2010 Christine was scheduled to travel out of the country. As she was going to be away for a considerable amount of time, Christine decided to pay-off the loan. She therefore decided to invoke clause 3 (b) of the Hire Purchase Agreement, which allowed her to pay-off the loan, together with a fee of Kshs. 8,000/-.
25. Upon inquiry at the bank, Christine learnt that the balance outstanding was Kshs. 875,000/-. She therefore paid that amount.
26. However, in the year 2011, when Christine went to the bank to collect the Log Book, she was told that she still owed Kshs. 108,000/-.
27. Christine testified that she paid – off that amount too.
28. Having made that payment, Christine sued the bank, because the bank had still refused to release the Log – Book.
29. During cross-examination, Christine said that the bank official who gave to her the figure said to reflect that outstanding balance, was Annette. The said Annette did not give the information in writing; she did so orally.
30. That prompted the defendant to point out that the bank does not relay information orally. Hamilton Suba, the defendant’s witness, stated that even when a customer was asking for his/her bank balance, it would normally be given by the bank, in writing.
31. Suba also pointed out that the Repayment Schedule was an integral part of the Hire Purchase Agreement which the bank gave to Christine.
32. I have perused the Hire Purchase Agreement dated 8th June 2009. That is the agreement which Christine confirmed having received.
33. Paragraph 3 reads as follows;
- “A copy of your original agreement form and repayment schedule are enclosed herewith for your retention. Your agreement for the above is repayable on the 26th of every month commencing on 26th June 2009, payable in 48 months as follows;”**
34. The next paragraph specified that the monthly instalments would be in the sum of Kshs. 40,348/-. Those instalments would be 47 in number, and then the final payment would be in the sum of Kshs. 43,348/-, which was inclusive of the “*option to purchase?* fee of Kshs. 3,000/-.
35. Even though Christine denied ever having had sight of the repayment schedule, I find, on a balance of probabilities, that she actually did see the said schedule. She saw it when she receiving the Offer from the defendant. I so find because it is inconceivable that the plaintiff received only the offer letter which expressly stated that the original Agreement Form and Repayment Schedule were enclosed with the offer letter; yet there were no enclosures. If the enclosures were missing, Christine would have been expected to ask for them.
36. According to the particulars on the Offer letter, the contract was **No. MG 09148202211**, and the Agreement was **No. NK/20562**.
37. However, the Offer letter did not cite the particulars of the account into which the borrower was to remit payments.
38. In the Banker’s Order which Christine executed, she specified the monthly instalments as Kshs. 40,348/-. Those particulars were contained in the offer letter.

39. Christine also indicated that the repayments would be credited to the;

“Repayment Account No. 0000226416 in respect of Agreement No. NK/20562....?”

40. Clearly, even though Christine did deny receipt of the Repayment Schedule and also of the Repayment Account, she had information about both.

41. Although the postal address on Offer letter is different from the one on the Hire Purchase Agreement, I hold that nothing turns on that. I so hold because Christine confirmed that she received both documents.

42. Suba testified that the sum of Kshs. 875,000/- was paid to the bank on 29th December 2010.

43. He also said that if the said payment was credited to the loan account, the balance would have been Kshs. 76,318/48.

44. Suba also testified that as at March 2011, the balance could not have exceeded Kshs. 108,000/-.

45. That therefore means that when Christine remitted the sum of Kshs. 108,596/- on 2nd March 2011, the defendant had received sufficient funds to pay off all the money which Christine owed the bank.

46. I find no justification in law or in fact for the bank to insist that although they had already received the money, they could only credit it to the loan account at monthly intervals, as specified in the Repayment Schedule.

47. Christine had proved that she wrote to the bank on 19th November 2010. By that letter she informed the bank she needed information on the closing figures, so that she could arrange to pay the same.

48. Christine has also proved that the balance which she was informed about was close enough to the sums reflected in the bank statement. I therefore find that she did not just pick up the said figure from the air. It is a figure which she was provided with by the bank.

49. Therefore, when the bank received the payment of Kshs. 875,000/-, after Christine had made the bank aware of her intention to pay-off the balance, the bank should have utilized the funds towards the outstanding loan.

50. Similarly, the sum of Kshs. 108,596/- should have been applied towards the outstanding loan.

51. The bank was not justified to continue holding the money, whilst debiting further interest on the loan.

52. In the result, I find that Christine must be and is hereby deemed to have paid off the whole loan amount.

53. Accordingly, I direct the defendant to hand over to the 1st plaintiff, the duly executed Transfer Form for the motor vehicle **KBH 733Q**.

54. The defendant will pay to the 1st plaintiff the costs of the suit.

55. However, the 2nd plaintiff's suit is dismissed, as the said plaintiff did not lead any evidence to prove his claim. Indeed, the 2nd plaintiff did not even prove that he had any cause of action against the defendant.

56. In the result, the 2nd plaintiff will pay to the defendant, the costs of his dismissed claim.

DATED, SIGNED and DELIVERED at NAIROBI this 29 day of June 2016.

FRED A. OCHIENG

JUDGE

Judgement read in open court in the presence of

F.N. Wamalwa for the Plaintiffs

Omino for Ogunde for the Defendant

Collins Odhiambo – Court clerk.