



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 117 OF 2011

RAMADHAN CHITECHI MITATI..... PLAINTIFF

VERSUS

EQUITY BANK LTD..... DEFENDANT

JUDGMENT

1. By a plaint dated 3rd November, 2011 the plaintiff **RASHID CHITECHI MITATI** moved this court against the defendant **EQUITY BANK LIMITED** seeking for

- a). **An order for an account to be taken in respect of the plaintiff's account No. 029019190622335 with the defendant for the period 18.12.2006 to 9.3.2011.**
- b). **Judgment be entered against the defendant for payment of such amount as is found due and payable to the plaintiff.**
- c). **Costs of this suit.**

2. The defendant on its part filed a defence on the 23rd of December, 2011 denying the allegations raised in the plaint and in particular the allegations of negligence. In it the defendant averred that all the accounts stated in the plaint belonged to the plaintiff as loan accounts, and the allegations of unlawful payments and/or credits were based upon misapprehension of the respective transactions. The defendant sought to have the plaint dismissed with costs.

3. It is worth noting that on 14th of December, 2011 the plaintiff filed a chamber summons pursuant to Order 20 Rule 1 and 3 of the Civil Procedure Rules wherein he sought for

- i. **That an account in respect of plaintiff's account No. 029019190622335 with the defendant be taken forthwith.**
- ii. **That Wilfred A. Onono an account consultant with the interest rates Advisory centre limited be and is hereby appointed to investigate account No. 029019190622335 with the defendant and report in 30 days.**
- iii. **That the amount, if any found due to the plaintiff be entered as a judgment for the plaintiff against the defendant.**
- iv. **Costs.**

4. The said application was heard exparte and an order issued in respect of prayer 1 & 2 of the said application. Nothing was said again of the said application or its order and no report was filed upto the time of writing this judgment.

5. At the hearing the plaintiff testified as PW1 as follows;

He is Ramadhan Chitechi Mitati a farmer. The defendant's bank lent him kshs. 991,000/= to buy shares from Mumias Sugar Company on the agreement that the money will be paid through sugar proceeds. He opened accounts with the defendant in Kisumu, Mumias and Bungoma. His last branch was in Bungoma being A/c. No. 029019190622335 and he used to pay his loan through the said account. That the defendant claimed much more from him than was due and owing and it withdrew amounts and credited to accounts unknown to him. He seeks to have the court interrogate the matter. He had only 1 account and the others were unknown to him.

6. In cross examination he stated that he has repaid the total loan amount and he was not aware that the bank had opened other accounts. He denied rescheduling of his loan account on 11.4.2009. He claimed in excess of 3.5 million from the defendant.

7. The defence called Mr. Stephen Muga Kimiti a credit manager Bungoma branch as its sole witness. The witnesses confirmed that the plaintiff was their customer who had been advanced Kshs. 1,000,900 for purposes of purchasing shares with Mumias Sugar Company and on 23.12.2006 he produced statements for account No. 029019190622335. It was also his evidence that the plaintiff repaid the loan with a lot of difficulties thus requiring rescheduling of the loans and re-opening of other accounts. So as the old loan accounts were closed and as the new ones were opened. Initial loan account was No. 029590637476 and the amount advanced was transferred to the said account. The plaintiff had defaulted in payment and the amount due was as at 31.3.2009 kshs. 694,624/=. The plaintiff requested for rescheduling on 31.3.09. The initial loan account was closed and a new opened being account No. 02905937423442. Thereafter the plaintiff continued to default, He once again approached the defendant and the loan was rescheduled once more and a new account No. 029059483340 was reopened this time, the outstanding amount was Kshs. 793,861.48/=.

It was his testimony that all the 3 loan accounts belonged to the plaintiff. That in total for the transaction, the plaintiff had 4 accounts. It was his evidence that no reconciliation was ever sought by the plaintiff.

8. Both counsels filed submissions. The plaintiffs' Counsel reiterated that there is a discrepancy from the amount loaned of kshs. 1,000,900/= and amount received of Kshs.991,000/= and further the plaintiff's account shows entries indicating monies moving from the plaintiffs account to account numbers. 029059063749, 029059, 374234 & 029059480334 with no explanation. He urged the court to direct for account taking before giving a final decree.

9. On its part the defence submitted that the plaintiff's claim is based on ignorance of the various accounts that were created in relation to his loan. That the said accounts were created at different times and for lawful purposes. That a reconciliation account was produced an order for account taking having been made at the behest of the plaintiff and as such the allegations are baseless.

10. I have considered the pleadings, evidence on record and submissions by the parties the issues for determination are;

i. Whether the plaintiff was advanced the sums of Kshs. 1,000,900/= by the defendant.

ii. Whether the loan was fully paid.

iii. Whether there was an over payment and/or wrong transfers from the plaintiff's account if so

iv. What is the sums?

v. Who meets the costs?

11. It is not in dispute that the plaintiff was a customer of the defendant. The parties are also in agreement that sometime in the month of December, 2006 the plaintiff applied for a loan to purchase shares with Mumias Sugar Company Ltd. The defendant states that a sum of Kshs. 1,000,900/= was advanced and the plaintiff states that he only got Kshs. 991,000/=. Both parties are right in their own respect. In the loan account No. 02090390637496 the defendant reflects that a sum of Kshs. 1,000,900/= was paid out as a loan on 23.12.2006. In account No. 0290198622335 belonging to the plaintiff a sum of Kshs. 991,000/= was credited from the loan account No. 0290590637476 on the said date. It is common knowledge that banks have charges levied on loans although this did not come out. The difference between the two is kshs. 9,900/=.

12. The plaintiff has claimed that he over paid the loan by a sum of between Kshs. 3,500,000/= and Kshs. 4,000,000/= however he did not produce any document by way of a cheque or a banking in slip to prove the huge amounts he paid alleges to have paid and which were channeled out to other unknown accounts. He had asked the court to allow him have an analysis done by an expert which order was granted. No search report was filed and no explanation given for the same.

13. On the other hand the defendant explained the method and process the bank used in dealing with the plaintiff's loan from the time of the disbursement to the time of filing suit. It gave an account of what was requested for, how much was disbursed and the fact that a loan account was initially opened and due to none servicing of the loan the same was rescheduled twice at the instance of the plaintiff requiring the old accounts to be closed and new ones opened and on paper as the new accounts were opened the outstanding amounts were reflected as credits in the main account and debited to the loan account.

14. I am satisfied by the explanation given on behalf of the defendant. It is clear that all sums being claimed to have been channeled to unknown accounts were credits and debits within the accounts been held on account of the plaintiff in a bid to reschedule the bad debt of the plaintiff.

15. I am satisfied further that no money was lost and indeed I do agree with the defendant that the claim is based on lack of understating by the plaintiff of the bank procedures.

16. In any event who asserts must prove his claim. The plaintiff failed to prove his claim, even against an order he obtained to call for expert evidence.

17. The plaintiff in his submissions urged the court to order for account taking. Against the above background my considered view is that the explanation by the defendant renders the said request baseless and unnecessary.

18. For the above reasons the plaint herein is dismissed with costs.

Dated at Bungoma this 1st day of August 2016.

ALI-ARONI

JUDGE.