



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO.256 OF 1996**

**NATIONAL BANK OF KENYA.....PLAINTIFF**

**VERSUS**

**JAMES MAKANA OGAMBA.....DEFENDANT**

**JUDGMENT**

The plaintiff, National Bank of Kenya brought this action to recover from the defendant, James Makana Ogamba Kshs.1,505,411.65 being the balance overdraft facility extended to him and outstanding as at the time of the filing of the suit on 20<sup>th</sup> May 1995. The plaintiff also seeks bank charges, interest and costs of the suit.

The defendant in his statement of defense expressly denied the claim and asserted that the suit was brought prematurely as the plaintiff ought to have recovered any outstanding debt by selling the security. The hearing commenced way back on 26<sup>th</sup> September 2005 before Apondi, J but had to be stood over generally. After several attempts to hear the matter failed, it eventually started afresh before me on 8<sup>th</sup> November 2011. The defendant having been duly served through his advocate on record, failed to attend court when the hearing was scheduled to start. The matter therefore, preceded *exparte*.

It was the plaintiff's case as calculated by Hannah Wangari Karanja, of Nakuru Branch, Recoveries Department that the defendant opened account number 301019029 with the plaintiff on 13<sup>th</sup> October 1989. Subsequently he applied for a banking facility in the sum of Kshs.550,000/=. The bank, instead, disturbed Kshs.250,000/= to his account on 2<sup>nd</sup> May, 1992. The defendant accepted this upon a charge of his parcel of land CENTRAL KITUTU/IKURUMA/498. At the time of disbarment, the defendant's account was overdrawn by Kshs.252,697.05. The defendant issued nine cheques between October 1991 and 22<sup>nd</sup> June 1993 totaling to Kshs.200,000/=. It is the plaintiff's case that the defendant made no attempt to repay the loan which stood at Kshs.5,403,122.75 as at 17<sup>th</sup> April 2004.

Demand letters issued to the defendant were not acted upon forcing the plaintiff to issue a statutory notice and a redemption notice both of which were ignored by the defendant. The firm of Pave Auctioneers was instructed. They in turn issued a notification of sale and the property advertised for sale. No bids were received hence the suit.

The averments in the plaint and the oral evidence presented at the trial have not been rebutted. There is sufficient evidence that the plaintiff disbursed Kshs.250,000/= in 1992. Todate, over twenty years later no evidence of repayment of a single cent has been adduced. In view of the interest rate chargeable, the initial figure has greatly escalated. The plaintiff's attempt to realize the security by exercising its statutory power of sale failed as no bids were received.

For these reasons, I enter judgment in terms of paragraphs (a), (b) and (c) of the plaint dated 17<sup>th</sup> May 1996 with costs.

**Dated, Signed and Delivered at Nakuru this 23<sup>rd</sup> day of January, 2012.**

**W. OUKO**

**JUDGE**