



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 145 OF 1995

NATIONAL BANK OF KENYA LTD.....APPLICANT

VERSUS

HENRY OCHIENG AOKO

T/A MARIWA ENTERPRISES.....DEFENDANT

JUDGMENT

National Bank of Kenya Ltd filed this suit on 1/3/1995 claiming Kshs.613,608.80, Bank charges and interest on the principal sum at Bank rates, from the defendant, Henry Ochieng Aoko. The plaint states that the sum was money lent or an overdraft allowed to the defendant by the plaintiff.

The defendant filed a defence on 6/4/1995 admitting that even though he was given overdraft facilities, the amount claimed is too high.

Joshua Nauwankas Partalala, a debt recovery officer with the National Bank of Kenya Nakuru, gave evidence on behalf of the plaintiff. He recalled that the defendant was their customer and held a current account No. 301029237 in the name of Mariwa Enterprises and was entitled to overdraft facilities. The defendant wrote 11 cheques between June 1992 to July 1993 totaling Kshs.380,000/- which was owed. He produced the cheques as Exhibit No.1. PW1 said that the bank charged 40% interest. Monthly statements were sent to the defendant regularly. He paid Kshs.75,070/-. As of 31/2/1995, he owed the sum now claimed as per statements Ex.2. A demand letter was sent to him. PW1 said that as of the time he was testifying, the sums owed stood at Kshs.2,006,496.20 and that the defendant has never asked for a breakdown of the overdraft.

The plaintiff's evidence was taken on 30/4/2003. the defendant's counsel, Mr. Ndubi was present but the defendant was absent and the court noted that there was no good reason for the defendant's absence. Hearing was adjourned for taking of the defendant's evidence. After several adjournments, the matter came before me on 13/7/2011, both counsel were present and directions were taken that the case proceeds from where J. Muga Apondi left it. When it came up for hearing on 8/12/2011, the defence counsel still sought an adjournment which the court declined to grant, considering that the matter is over 15 years old and there was no good reason for the adjournment.

The defendant did not adduce any evidence in support of the defence and it remains a mere denial. At paragraph 3 of the defence, the defendant admitted to having been allowed overdraft facilities and his only complaint was that the sum claimed is too high. He did not tell the court what he owed in accordance to his own computation. It is therefore not in dispute that the defendant held an account with the plaintiff

and had obtained overdraft facilities. Once the defendant took the overdraft, it followed that he had to pay the bank interest and charges which were applicable at the time. The mere fact that the defendant does not agree with the amount claimed is no defence because it would have been a matter of the parties taking accounts. PW1 tendered evidence of the bank's claim which was backed by a statement of accounts and the same has not been controverted. I am satisfied that the plaintiff has proved its case on a balance of probability, that the defendant owes the sums claimed. Judgment is hereby entered for the plaintiff against the defendant as prayed in the plaint. Costs to the plaintiff.

DATED and DELIVERED this 24th day of February, 2012.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Kamonjo for applicant.

N/A for the defendant.

Kennedy – Court Clerk.