



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Civil Case 644 of 2000

THE CO-OPERATIVE BANK OF KENYA..... PLAINTIFF

VERSUS

JOHN MUIRURI WAIGANJO DEFENDANT

RULING

The Defendant's motion before court for consideration is dated 29th March, 2012. The same is expressed to be brought under Section 1A & 1B and Section 3 of the Civil Procedure Act and under Order 9 Rule 9 of the Civil Procedure Rules. It seeks orders to the effect that the firm of Githinji Kimamo & Co. be granted leave to come on record for the Defendant/Judgment-debtor and the Plaintiff do provide the statement of Accounts for all the transactions pertaining to the Defendant/Judgment debtor.

The application was supported by the Affidavit of John Muiruri Waiganjo sworn on 29th March, 2012.

The Applicant contended that there is already a judgment on record and that he had appointed the firm of Githinji Kimamo & Co. Advocates to act on his behalf. He further contended that he took a loan of Kshs.2,000,000/- from the Plaintiff in 1990 which he substantially repaid, that in 2009, the Respondent sold his land being LR No. Ngenda/Kahuguini/745 to recover the balance of the loaned amount, that he has never been given any Statement of Account, and that he does not understand how the Respondent should be claiming Kshs.4,101,473/- without there being a proper Statement of Account.

Although the application was served upon the Plaintiff's Advocates on 16th April, 2012, the Plaintiff did not file any documents in opposition in terms of Order 51 of the Civil Procedure Rules. When the matter came up for hearing on 9th May, 2012, I directed that the same be heard ex parte.

As it were therefore, the application is unopposed.

This suit was filed on 7th April, 2000 claiming a sum of Kshs.574,000/- together with interest of 31% per month. Judgment in default was entered on 14th June, 2000. Warrant of attachment and sale of property were issued on 31st July, 2000 for Kshs.720,960/55. An attempt to set aside the said judgment was declined. The said judgment was later set aside by consent of the parties. However, on 20th November, 2001, summary judgment was then entered for Kshs.990,928/- together with interest at 31% per annum from 20th November, 2011 until payment in full. There seems to have been several applications for execution of the decree but the record does not show what came out of them.

The Applicant has indicated that in or about 2009, his property known as LR No. NGENDA/KAHUGUINI/745 was sold. He annexed a copy of the Standard Newspaper advertisement of Thursday 24th September, 2009 which shows that the said property which was in his name was to be sold by public auction on 16th October, 2009 by **Sportlight Intercepts Kenya Ltd.** The property measured 2.71 hectares. Although the advertisement does not state the reason for the sale, I am inclined to believe the Applicant that it was to recover funds advanced to him by the Plaintiff because there was no denial of that averment.

Having considered the amount entered as judgment, the fact that the Applicant's property was sold by public auction and the Plaintiff's outstanding claim of Kshs.4,101,473/- I am convinced that the Applicant's request is not baseless. The court need to establish what amount the property was sold for and whether the amount realized did or did not clear the debt.

Accordingly, under Section 1A and 3A of the Civil Procedure Act, I believe granting the prayers sought will lead to dispensing justice as it will bring to an end any multiplicity of applications as the applicant will know the exact amount due to the Respondent, if any.

Accordingly, I allow the application as prayed and further direct that the Respondent does file the Statement of Account in question on oath within 14 days of the date of this ruling.

DATED and DELIVERED at Nairobi this 6th day of June, 2012

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A. MABEYA
JUDGE