



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

CIVIL CASE NO. 517 OF 2010

PETER KINYANJUI NYAGA.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LTD.....DEFENDANT

RULING

By an application by Chamber Summons dated 22nd July, 2010, and taken out under Order XXXIX Rules 3,5 and 9 of the Civil Procedure Rules, and Sections 1A, 3A and 63 (e) of the Civil Procedure Act, the Applicant seeks three substantive orders from the court as follows -

- 1) That the Defendant be restrained for charging interest on the Plaintiff's loan facilities at the commercial rate of 15% per annum forthwith pending the hearing of this application and the main suit;**
- 2) A declaration that all the commercial interest rate charged on the Plaintiff's loan account in respect of the purchase of LR No. Muguga/Muguga/T.437, the car loan and other loans with effect from 23rd May, 2008, is irregular and illegal;**
- 3) That the Defendant be forthwith ordered to facilitate and allow the take over of the Plaintiff's loan facilities by his current employer CFC Stanbic Bank Ltd.**

The application is supported by the annexed affidavit of Peter Kinyanjui Nyagah, the Applicant, and is founded on the grounds that –

- (a) The Defendant is in breach of its agreements and contracts in respect of the loan for the purchase of LR No Muguga/Muguga/T.437, the car loan and other loans;**
- (b) The Defendant is accruing commercial interest from the Plaintiff which is illegal, unjust and unconscionable;**
- (c) The Defendant has refused and ignored to allow the redemption of the loans by the Plaintiff's previous employer firstly Krep Bank Ltd., and now CFC Stanbic Bank Ltd;**

(d) It is unjust that the Defendant has refused to allow the redemption of the loans by the Plaintiff's subsequent employers who are also banks that would allow the Plaintiff preferential low interest staff rates as opposed to commercial rates;

(e) The Defendant's holding of the Plaintiff's loan facility deprives Plaintiff of his right of redemption which is a great injustice unto him while allowing the Defendant to enrich itself immensely at the Plaintiff's cost.

The Respondent filed two grounds of opposition. These were that –

(i) The Applicant has not made out a case for an injunction and the principles set out in GIELLA v CASSMAN BROWN have not been satisfied.

(ii) There has been no full disclosure on the part of the Plaintiff and he is undeserving of the equitable remedy which he seeks.

The parties herein were given leave by the court to file written submissions. The Defendant/Respondent filed its submissions on 9th February, 2011, but the Applicant did not oblige.

The brief background to this matter is that the Applicant obtained some loans from the Respondent who was his employer at that time. As an employee of the bank, he was privileged to repay the loan with interest at bank staff rates which are much lower than commercial rates. Upon leaving the Respondent's employment and obtaining employment with another bank, he sought to transfer the outstanding loan to the new employer so that he may continue to pay interest at bank staff rates. His letter dated 15th February, 2008 and addressed to the Respondent read as follows –

“Dear Madam,

RE GRACE PERIOD FOR MY LOANS

The above matter refers.

I write to request for a grace period of six months within which period the above will continue applying at the Staff rate.

This is to facilitate the taking over of the loans by K-Rep Bank which organization I have joined.

I pray that this request receives a favourable response.”

The bank responded immediately by a letter written on February 16th, 2008 in which they said –

“Dear Peter,

RE PAYMENT OF 4 EXISTING LOANS AT STAFF RATE

We refer to your letter dated February 16th (sic) 2008 and advice (sic) that your request to pay your existing loans at Staff rate has been granted. Your loans shall be retained at staff rate up to August 6th, 2008. It is expected that you shall complete the loans take over with your new employer within this time frame.

It is also a requirement of this approval that you ensure that monthly repayments to all your loans are paid by the last day of every month. Default of repayment(s) on any of the loans shall result in immediate conversion of all your loans to public rate.”

Apparently the six month period came and went, and the Applicant's loans were not taken over by his new employers within the given time frame. It is not clear what the Applicant did between the period thereafter and the filing of this application.

After considering the pleadings and the submissions of the Respondent I am constrained to observe that the issue of the loan between the Applicant and the Respondent is an affair between the two of them.

Their relationship is governed by the terms and conditions contained in the documents which were signed between them. That relationship is exclusively between the two of them and does not extend to Krep Bank Ltd and/or CFC Stanbic bank Ltd. The arrangement between the litigants was not a tripartite relationship.

The orders now sought by the Applicant can only be negotiated between him and the Respondent. The Respondent had indulged him once before, and any further indulgence should emanate from the same source. In the absence of a clause in the agreement which the court can enforce, the court has no *locus standi* to grant the orders sought. It is not the business of the court to manage the affairs of litigants. That is left exclusively to them. Unless there is an enabling provision in the agreement, the court lacks the locus to regulate interest rates in commercial transactions which is what the Applicant is asking the court to do. The duty of the court is to interpret and, where proper, to enforce contracts between the parties, but not to make such contracts for the parties.

For these reasons the application is not merited and it is hereby dismissed with costs.

DATED and **DELIVERED** at **NAIROBI** this 25th day of March 2011

L NJAGI
JUDGE