



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL CASE NO. MISC. 313 OF 2008 (O.S)

GATATHA FARMERS CO. LIMITED.....PLAINTIFF

VERSUS

THE FIRST NATIONAL BANK OF CHICAGO.....DEFENDANT

JUDGMENT

This judgment is delivered in the Originating Summons dated 10th June 2008, wherein leave to dispense with the service of the summons and hearing notices was granted on 4th February 2011.

The facts of the case are as set out in the Supporting Affidavit of the Plaintiff's Chairman, Peter Mburu Gakwa, sworn on 10th June 2008. The orders sought under the suit are as follows:-

1. That the Legal Charge dated 2nd July 1982 registered in favour of the Defendant over the Plaintiff's immovable properties comprised in the land Title No.s L.R 1400, 1404, 1402, 2177, 2272 100355 Trans Nzoia District be discharged.

2. Costs of the application be provided for.

The Originating Summons was necessitated by the closing of the Defendant's operations in Kenya after its loan to the Plaintiff (KShs. 15,000,000/=) had been repaid in full but without discharging the charged properties. The Originating Summons was formally heard, wherein one witness testified on oath and produced a bundle of documents comprising, inter alia, the following:

1. **The charge document.**
2. **Copies of the above-stated titles all showing that the charge registered in favour of the Defendant has not been discharged.**
3. **The Plaintiff's letter dated 24th June 1986, under cover of which, the final installment of the loan (KShs. 1.5 M) was paid vide two cheques numbered 1112324 and 936689 respectively.**
4. **The Defendant's letter dated 30th June 1986 acknowledging receipt of the above loan balance and requesting for payment of legal charges in order to close the accounts.**
5. **A statement of account dated 31st July 1986 reflecting a zero balance on the Plaintiff's account with the Defendant.**

The witness testified that all efforts to trace the Defendants for the purposes of obtaining a discharge of charge were fruitless and that even after the Originating Summons was advertised in the media no-one came up to defend the same.

I am satisfied, on the basis of the evidence placed before me that the Plaintiff has proved its case on the balance of probabilities. The documents exhibited before court speak for themselves and the contents thereof have not been rebutted at all.

Considering also, that all and any claims, as would be based on the Charge document herein would be statute barred under the law of Limitation, justice demands that the orders sought herein be granted to free the Plaintiff's properties from the unnecessary encumbrance.

Consequently, the Originating Summons is hereby allowed and the orders sought granted. For whatever it is worth an order for costs to the Plaintiff is also granted.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD day of SEPTEMBER, 2011.

M.G. MUGO

JUDGE

In the presence of :

Mr. Kuria holding brief for Mr. Raiji
No Appearance

For the Applicant
For the Respondent