



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Case 346 of 2009**

**OSMAN SALEH ABDALLA.....PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA.....1<sup>ST</sup> DEFENDANT**

**GARAM INVESTMENT.....2<sup>ND</sup> DEFENDANT**

**RULING**

On 5<sup>th</sup> November 1999 the plaintiff charged his property situate in Nakuru District and known as **Title No. Nakuru/Rare/Gichogo/72** to the 1<sup>st</sup> defendant to secure a sum of Kshs.200,000/- advanced to him. Upon default in the repayment the 1<sup>st</sup> defendant served him with notice and instructed the 2<sup>nd</sup> defendant to sell the land to recover the balance of Kshs.323,992.35 outstanding as at 13<sup>th</sup> June 2009. On 15<sup>th</sup> December 2009 the plaintiff filed this suit and sought a permanent injunction to restrain the sale on the grounds that the 1<sup>st</sup> defendant has applied excessive interest to the amount due and is demanding Kshs.323,992.35 and Kshs.647,209.20 as the amounts outstanding. Contemporaneous with the filing of the suit he applied for an injunction under **Order 39 Rules 1, 2, 3 and 9** of the **Civil Procedure Rules** on the same grounds.

In his replying affidavit, Allan Onyango, a Legal Officer with the 1<sup>st</sup> defendant averred that the sum of Kshs.647,209.20 was a typographical error. The correct sum is Kshs.323,992.35. He further stated that the defendant is clearly in default and his application should be dismissed with costs.

Having considered the matter I find that the 1<sup>st</sup> defendant made a typographical error in demanding a sum of Kshs.647,209.20 instead of Kshs.323,992.35. That error was in any case only in one of the 1<sup>st</sup> defendant's letters. The statutory notice and the auctioneer's demand letter had the correct figure. Other than that error which has since been corrected, the plaintiff is clearly in default in the repayment of the amount due. In the circumstances I find no merit in the application and I accordingly dismiss it with costs.

**DATED and DELIVERED this 2<sup>nd</sup> day of June, 2010.**

**D. K. MARAGA**  
**JUDGE.**