



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 565 of 1994**

**NATIONAL BANK OF KENYA.....PLAINTIFF**

**VERSUS**

**STANLEY GATHURU NGATA.....DEFENDANT**

**JUDGMENT**

On 25<sup>th</sup> August 1994, the plaintiff, **National Bank of Kenya** filed a suit against the defendant, **Stanley Gathuru Ngata** seeking relief against him as follows:

- a) Payment of Kshs. 1,372,216.00 being an outstanding balance on an overdraft facility granted to the defendant at the defendant's request.***
- b) Bank charges and interest on the principal sum at a bank rate of 40% per annum or current bank rate of interest calculated on daily balances at monthly rests from 1<sup>st</sup> August 1994.***
- c) Costs of and incidental to the suit and interest thereof at 14% and Value Added Tax thereon.***
- d) Any other further relief the court would deem fit to grant.***

The defendant filed a defence to the action on 16<sup>th</sup> September 1994 denying that he owed the plaintiff the sum claimed under the plaint and contending that, if at all he owed the plaintiff the sum stated in the plaint, then the same had been liquidated to its full extent thus rendering the plaintiff's claim misconceived and unjustified. The defendant contends also that the plaintiff's claim is vague, lacking in material particulars and bad in law. The defendant having not responded to draft issues drawn and served upon him (*through counsel*) on 5<sup>th</sup> January 1998, the plaintiff filed its own statement of issues on 25<sup>th</sup> February 1998 wherein the issues for determination are set out as follows:

- 1. Is the plaintiff entitled to recover the amount claimed in the plaint?***
- 2. Has the debt owed to the plaintiff been liquidated by the defendant to its full extent?***
- 3. Is the plaintiff's claim misconceived and unjustified?***
- 4. Does the plaint contain the necessary particulars to enable the defendant to effectively meet the plaintiff's claim?***
- 5. Is the plaintiff's claim bad in law and should it be struck out?***

## **6. Which party should pay the costs of this suit?**

Despite the suit being fixed for hearing on numerous occasions after the close of pleadings, the same was not confirmed for hearing until late 2008. Neither the defendant, nor his advocate attended court at the hearing of the suit despite the fact that due notice had been served by registered post. The plaintiff called only one witness, **Jeniffer Meri, (PW1)**, an employee of the plaintiff in the recoveries department. She testified that she had worked with the plaintiff bank for 19 years and was therefore well acquainted with the facts of this case. It was her evidence that the defendant opened a current account with the plaintiff at its Nakuru Branch on 24<sup>th</sup> June 1987 as evidenced by a copy of an account opening card of that date, which she produced as the plaintiff's exhibit 1. The defendant requested for and was granted by the plaintiff an overdraft facility on the said account (*No. 301, 015, 856*) but failed to service the same, causing the account to be overdrawn, with the debt growing through the years due to interest charges. According to PW1, the amount due from the defendant at the time of the hearing was Kshs 7,670,741.95.

PW1 produced a bundle of statements to support the indebtedness as well as demand letters sent to the defendant by the plaintiffs and its advocates but which were not honoured. She testified further that at one time the defendant requested the plaintiff to restructure the debt and to convert the overdraft into a normal secured loan recoverable by monthly instalments. This was done in May 1995 and the defendant charged a property of his, land parcel No. **Nakuru Municipality/Block 16/135** as security for the loan, which was then stated to be Kshs 1,907,096.00 as at 30<sup>th</sup> May 1995. The defendant accepted the restructuring terms, as set out in the plaintiff's letter of even date produced as Ex. 7. Under the new terms, the defendant was to liquidate the loan by way of monthly instalments of Shs 39,732 plus interest at 22%. He did not, however, make any payment and the security charged to the plaintiff was sold, realizing only a paltry Shs 200,000/=. The same was credited to the loan account.

The defendant's defence appears to have been a mere denial which cannot hold, given the fact that he did not dispute the debt but instead acknowledged its existence in the numerous correspondences exchanged with the plaintiff. He made several offers to liquidate the outstanding without fulfilling his undertakings in that regard. Two years after the filing of the suit the defendant made what would appear to have been his last offer to liquidate the sum due as is evidenced in a letter he wrote to the plaintiffs on 3<sup>rd</sup> September 1996 (*Ex. P.8*).

There is no dispute whatsoever that the defendant did obtain credit facilities on his account with the plaintiffs herein and that he neglected servicing the debt incurred thereunder. He made several promises to liquidate the same but never made good those promises. Despite filing a defence denying the indebtedness and stating that the same had been fully liquidated the defendant tendered no evidence in that regard. The plaintiffs therefore have a valid and justified claim against him and are entitled to recover the sums due. Although the plaint did not contain much in the nature of particulars, the evidence tendered proves quite clearly that the defendant was fully aware of the claim and the particulars thereof and was in no way prejudiced. I am of the considered view, therefore, that the plaintiff has proved its case against the defendant on the balance of probabilities, in which case, its suit succeeds.

Accordingly I hereby enter judgment in favour of the plaintiff in the sum of Kshs 1,372,216.00 as sought under prayer (*a*) of the plaint. Interest on the said sum is hereby granted at the rate of 22% as agreed between the parties at the time the debt was restructured, thus varying the initial terms of repayment. The same shall be payable from the time of filing suit until payment in full.

The plaintiff, having not tendered any evidence to support its claim for bank charges, which charges, in any event have not been specified, the same are not awarded. No basis has been laid for the plaintiffs claim for Value Added Tax either. The same is also denied. The plaintiff shall have costs of the suit and interest thereon at court rates until payment in full.

**Dated signed and delivered at Nakuru this 30<sup>th</sup> day of October, 2009**

**M. G. MUGO**

**JUDGE**