



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Civil Case 416 of 2007**

**GEOFFREY NHATHI NGARUIYA**

**T/A RUARAKA PETROL STATION..... PLAINTIFF**

**VERSUS**

**STANDARD CHARTERED BANK & OTHERS.....DEFENDANTS**

**RULING**

The plaintiffs have re-amended the plaint so that there is now first plaintiff trading as Ruaraka Kenol Petrol station and 2<sup>nd</sup> Plaintiff as Janet Gathoni Ngaruiya.

Among the prayers sought in the plaint is a temporary injunction. This Chamber Summons is brought on 9/11/2007 under **Order 39 Rule 1, 2, 3** and **9**. They seek temporary injunction against the defendant to restrain itself and its agents from disposing of the plaintiff's property LR Nairobi Block110/453 pending the determination of this suit.

The grounds are stated. The plaintiffs charged the land and the defendant charged illegal interest contrary to **Section 39 of Banking Act Cap 488, Central Bank Act** now repealed leading to a debit of Kshs.6,432,576.05 as at 30/6/2007 at the rate of 15.75% per annum. And that it is in interest of justice that the property be preserved pending determination of this suit. That the plaintiffs have already deposited Kshs.3,000,000/= leaving a balance of Kshs.636,698.75. This was in the year 2007. The affidavit of Mr. Geoffrey Ngaruiya shows that the suit is based on calculations by **Interest Rates Advisory Centre** who are said to be experts in this filed these days.

The applicants have exhibited IRAC, report showing how the defendant charged illegal interest after repayment of Kshs.3,000,000/=. It is admitted that disputed amount unpaid is Kshs.636,698.75 as at 9/11/2007. It is admitted that statutory notice was served that is why applicants paid the above mentioned Kshs.3,000,000/=. It appears no other payment has been paid since then. The defendant has caused an affidavit in reply to be filed by one Charles K. Wambua. He swears that he is account manager of plaintiff's mortgage account. He swears that the plaintiffs were granted overdraft facility of Kshs.2,000,000/= at the rate of 15.75% per annum. A term loan facility in the sum of Kshs.3,617,000/=

to be paid within 36 months at the interest of 15.75% per annum and the facilities were secured by guarantee by Janet Gathoni for 5,600,000/=, legal charge on property Nairobi Block 110 for Kshs.5,800,000. Further legal charge over the same property for Kshs.800,000/=.

It is denied that illegal interest was charged. The defendant states that they have admitted owing Kshs.6,398,559.15 but in fact they have admitted outstanding Kshs.636,698.00 which they were willing to pay since 9/11/2007. The defendant despite the method used in calculating the interest, such a dispute can only be resolved by calling evidence at trial. The plaintiff claims the balance to be Kshs.3,860,798.80. That sum is far in excess of what the plaintiffs admit at the same period.

It is a common principle of law of mortgages that a mortgagee will not be restrained from exercising its power of sale on account of a dispute of account only. In case of remedy which can be satisfied in damages, injunction will not be granted.

In this case the only issue is in charging illegal interest. It is not submitted that the defendant who is a bank would not be able to pay damages if warded to the plaintiffs.

In the circumstances, I do not find any reason to restrain the defendant from exercising its powers of sale. It is to be noted that the plaintiffs have not made any attempts to pay any of the money they admit. I therefore, dismiss this application with costs in cause.

Orders accordingly.

**Dated, Signed and Delivered at Nairobi** this 19<sup>th</sup> Day of November, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**