



NATIONAL BANK OF KENYA.....PLAINTIFF/RESPONDENT

VERSUS

KISAIKA OLE RORAT.....DEFENDANT/APPLICANT

RULING

The applicant in the chamber summons dated 13th November 2006 sought for orders that the court do order the taking of, and or examination of accounts between the applicant and the respondent. This application is brought under **Order XIX rules 1 and 2** and **Order XXVII rule 11, 12 and 20** of the **Civil Procedure Rules**. The application is grounded on the fact that the applicant alleges that he has repaid the money borrowed from the respondent and the respondent has not given credit for all the payment made. Secondly the respondent has not disclosed the mode of computation of arrears and interest which the applicant contends are irregular. The applicant therefore contends that he has paid the whole loan of Kshs 200,000/= which he obtained in 1995.

This application is supported by the applicant's affidavit. The applicant deposes that he borrowed Kshs 200,000/= in 1995 and he has repaid monies in excess of Kshs 700,000/= and in August 2005 the respondent was still demanding about Kshs 900,000/= from the applicant. The applicant also annexed some illegible copies of banking slips for monies deposited in the respondent's bank, I was unable to discern the amounts paid from those documents.

This application was opposed by the respondent. Counsel for the respondent argued that the present application was merely meant to delay the execution. Moreover the applicant has never requested for the statements of accounts from the plaintiff. It was also the contention of the counsel for the respondent that the provisions of Order XIX rule 1 and 2 are not applicable to this application. The agreement for the loan clearly sets the loan and interest payable. Lastly the matter is *res judicata* by dint of the ruling of this court of 13th October 2006.

I have taken into consideration all the submissions, the principle issue for determination is whether this court should grant the order of taking of accounts. A closer look at the provisions of **Order XIX rule 1 and 2** reveals that, this order is applicable where a plaintiff has filed a suit seeking for accounts and the defendant has failed to appear, that is when an order for accounts can be made directing all the necessary enquiries and directions.

In this particular case, it is the respondent who filed a suit against the defendant/applicant and there is no claim for accounts. It is a liquidated claim for a sum of Kshs 535,715.40 with interest at the rate of 32% per annum from the 17th of May 1998 until payment in full. Another matter to point out in this application, is that the applicant has not shown any evidence that he has attempted to apply for the statements of accounts from the respondent. I therefore find no justification for making this kind of application at this particular stage of execution proceedings other than a delaying tactic.

Counsel for the applicant relied on several decisions of the High Court where the court ordered accounts to be taken and gave directions how the said accounts should be taken. The cases of **Joseph Kamau Mwangi –vs- Kenya Commercial Bank Limited [2004]eKLR** and **Officequip Services Limited –vs-**

The Co-operative Bank of Kenya Limited [2005]eKLR.

I have gone through these cases and the circumstances under which the orders of accounts were made are different. Firstly the applicant was seeking for orders of injunction and accounts and in order for the court to be able to determine the issue of whether the injunction should be granted the court found it necessary to dwell with the preliminary issue of accounts. In the second case the plaintiff also sought for an injunction and accounts and his case perfectly fell under the provisions of **Order XIX** of the **Civil Procedure Rules**.

Moreover this same issue was also discussed in the ruling of 13th October 2006 and I find the present application a re-agitation of a matter which was determined. Accordingly I find the application has no merit and it is hereby dismissed with costs.

Ruling read and signed on 25th day of January 2008.

M. KOOME

JUDGE

25/1/2008

Before Koome – Judge

Mwiti – Court clerk

Kahiga holding brief for Karanja for Applicant

N/A by respondent

Court: Ruling read and signed on 25th January 2008.

M. KOOME

JUDGE