



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Case 86 of 2001**

**THE CO-OPERATIVE BANK(K) LTD.....PLAINTIFF**

*Versus*

**JOHN GITHAIGA NDERI**

**ESTHER WANJIRU GITHAIGA.....DEFENDANTS**

**JUDGMENT**

The Plaintiff's case arises out of a loan granted by the Plaintiff to the 1<sup>st</sup> Defendant. That facility was guaranteed by the Defendant and in addition the 2<sup>nd</sup> Defendant charged her property **L.R. NO. MWEIGA BLOCK 5/MUTHUINI/27** as security for the said facility. The Plaintiff averred in the Plaintiff that the 1<sup>st</sup> Defendant defaulted in the repayment of the facility and that thereafter the Plaintiff unsuccessfully attempted to realise the charged property. That there were lack of acceptable bids to the said sale. The Plaintiff therefore prayed for judgment against the Defendants jointly and severally for Ksh.782,862.75 together with compound interest at the rate of 25% from the 1<sup>st</sup> April 2001 until payment in full. On the day of hearing the Defendants, although served, failed to attend court. P. W.1 stated that he is a credit officer with the Plaintiff and has been so for the last five years. He stated that the 1<sup>st</sup> Defendant was granted a loan of Ksh.300,000/- on 29<sup>th</sup> October 1996. On the letter of offer which the 1<sup>st</sup> Defendant signed, it was provided that the loan would accrue interest at the rate of 29%, that is 6 % above base rate. As security for the said loan the Defendants offered property **MWEIGA/BLOCK 5/MUTHUINI/27**. In addition the 2<sup>nd</sup> Defendant offered a personal guarantee. After all the finalities were completed the 1<sup>st</sup> Defendant had the loan dispersed on the 8<sup>th</sup> January 1997 for Kshs.300,000/=. The Defendant failed to regularly maintain the loan account and on the 10<sup>th</sup> March 1998 the Plaintiff demanded the amount of Ksh.63,000/= as arrears and Ksh.66,776/= for the overdrawn current account. That demand elicited a response from the 1<sup>st</sup> Defendant by a letter dated 9<sup>th</sup> April 1998 where he indicated that he would continue to service the loan and committed himself to stabilize the current account. That promise was not upheld and a subsequent demand was sent dated 22<sup>nd</sup> December 1998. By then the account was in arrears of Ksh.130,133.25 and the 1<sup>st</sup> Defendant failed to respond to the demand. On 12<sup>th</sup> March 1999, a demand was sent to the guarantor to the effect that the amount due and payable by the 1<sup>st</sup> Defendant was Ksh483,517.05. In that demand the Plaintiff threatened to realize its security by sale of the charged property. P. W. 1 then gave evidence of the various attempts that were made by auctioneers to sell the charged property but that the same failed to realize any bidders. Thereafter demands were sent to the Defendants and the Defendants failed to respond.

In support of the Plaintiff's claim there were exhibited bank statements, the charged document, the 2<sup>nd</sup> Defendant's guarantee and the demands that were sent to Defendants.

I have examined the Plaintiff's exhibits and have considered the evidence submitted on behalf of the Plaintiff and I find that a case has been made against the Defendants as prayed. Accordingly the court does hereby enter judgment for Ksh.782,862.75 as at 28<sup>th</sup> October 2000 and with compound interest for 25% per annum, applicable from the 28<sup>th</sup> October 2000. The Plaintiff shall also have costs of the suit.

***Dated and delivered at Nyeri this 6<sup>th</sup> day of July 2007.***

MARY KASANGO

JUDGE