



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

**Civil Case 3639 of 1994**

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

**VERSUS**

**BENJAMIN WACHIRA GACHICHIO.....DEFENDANT**

**RULING**

This is an application by the Plaintiff/Decree Holder under Order LII Rule 3 of the Civil Procedure Rules and Section 5(1) of the Judicature Act for leave to apply for an order of committal against the Respondent the Permanent Secretary Office of the President in charge of Provincial Administration to prison for contempt of the order made by this Honourable Court on 28<sup>th</sup> July 2006. In support of the application L.G. Kamweti company Secretary OF THE Applicant has sworn an affidavit giving grounds for the application.

The facts that give rise to this application may briefly be stated as follows. The Decree Holder which is a commercial bank had advanced a loan to the Judgment-Debtor. The Judgment – Debtor defaulted in servicing his loan and was sued by the Decree Holder to recover the outstanding amount. Paragraph 3 of the plaint stated as follows:

“3” The Plaintiff’s claim against the Defendant is for the sum of Kshs.2,507,766.25 together with interest thereof at 40% per annum from 28<sup>th</sup> February 1994 until payment in full being in respect of a loan and/or overdraft facility granted to the Defendant by the Plaintiff at the request of the said defendant full particulars thereof are well within the Defendant’s knowledge.”

The Defendant was served with summons but failed to enter appearance nor did he file a defence. The Plaintiff applied and obtained judgment in default judgment in default of defence.

After it obtained judgment it applied for an order for attachment of the  $\frac{1}{3}$  Judgment Debtor’s salary which order was served upon the Respondent and which he failed to implement. With due respect to counsel for the Applicant this is what I may term an abuse of the court process. The procedure used to recover a loan is quite clear. First before the bank advances a loan to any Applicant who applies for a loan that Applicant must either provide security or sign a standing order authorizing his employer to deduct a specific amount of money and send the same to the bank and the employer must commit himself to deducting the employees’ salary and sending the same to the bank.

It is only then the employer fails to deduct the employees salary and remit the same to the bank that action may be taken against him.

Furthermore the plaint does not state how much loan was advanced to the judgment-debtor, when he defaulted how much was due and how much of the loan he had repaid.

For the reasons stated above I decline to grant leave as prayed and dismiss the Decree Holder’s Notice of Motion dated 18<sup>th</sup> June 2007.

Dated and delivered at Nairobi this 27<sup>th</sup> day of September 2007.

**J.L.A. OSIEMO**

**JUDGE**