



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE 55 AOF 1978

STEPHEN KARIUKI MAHUGU

T/A RURIMA SERVICE STATION.....1ST PLAINTIFF

NEWTON NDUNGU NDIRANGU.....2ND PLAINTIFF

CHARLES MUCHIRI MAHUGU.....3RD PLAINTIFF

Versus

THE CO-OPERATIVE BANK OF KENYA LTD.....1ST DEFENDANT

MUGA AUCTIONEERS & GENERAL MERCHANTS.....2ND DEFENDANT

RULING

The Plaintiffs have brought this action against the Defendant. The first Plaintiff admits having obtained from the Defendant a loan facility. In the plaint there are various allegations against the Defendant such as, that the Defendant was charging the 1st Plaintiff excessive rate of interest and was debiting illegal charges. The other Plaintiffs being guarantors of 1st Plaintiff alleged that the Defendant rescheduled the loan without consulting them as guarantors. Further they claim that the Defendant was relying on blank guarantees as against them. The 1st Plaintiff did also alleged that the defendant failed to credit his account from payments made to the Defendant. The Defendants in their defence denied the allegations by the plaintiff and in respect of interest they stated that the charge instrument provided that that the rate a subject to change without prior notice to the plaintiffs. They denied levying illegal charges. The Defendants do however accept that the guarantees may have been blank but they allege that the 2nd and 3rd plaintiffs knew that they were guaranteeing the 1st Plaintiff. The Plaintiffs have filed an interlocutory Chamber Summons dated 5th July 2007. They seeks an injunction to be issued to restrain the Defendants from selling by public auction the charge properties. That application was argued vigorously before the court and each party had various lists of authorities to support their case. But however in considering those arguments the parties were inviting this court to make decision which

would be tantamount to making final decision of the main suit. Bearing in mind that this is an interlocutory application any decision made in this ruling should not in any way influence the final judgment after full hearing. I have considered the arguments raised by both parties in respect of S. 39 of the Central Bank of Kenya Act. This is a section that regulated interest rates of special banks and specified financial institutions. That section was deleted on 1st Aug. 2005 by Act 8 of 2004. The Defendant was not correct when in argument it was said that the section was deleted in 1996. That being the case I am of the view that it is of utmost importance that the parties be heard fully for the court to determine what part, if any, that section played in the running to plaintiffs accounts. The fact that the section was deleted in the year 2005 I find that the Plaintiff has shown a *prima facie* case with probability of success, for it may very well be that some of the charges and rates of interest were caught by that section when it was operative. I have deliberately not gone into the arguments that were placed before me to ensure that the case when it comes for full hearing will not be prejudiced. It however in the court's view just to issue an injunction for a limited period only. This court will issue an injunction to last only six months from the date of this ruling.

The court does hereby in issuing that injunction, which shall last for 6 months from this date hereof restraining the Defendant whether by themselves, their servants or agents from advertising, selling by public auction or private treaty all those properties known as NANYUKI MUNICIPALITY BLOCK 2/329(KILIMO), LR NO. AGUTHI /GATITU/1320; LR NO. 7623/194; LR NO. AGUTHI/GATITU/2001 and LR NO. AGUTHI/GATITU/1319.

The parties should endeavour to fix this case for hearing before the expiry of the period for that injunction. The costs of the Chamber Summons dated 5th July 2007 shall be in the cause. Orders accordingly.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 15th day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE