



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

Civil Case 560 of 2006

**HENRY WANYAMA KHAEMBA.....
....PLAINTIFF**

VERSUS

**STANDARD CHARTERED BANK (K) LIMITED
.....DEFENDANT**

RULING

The plaintiff is the owner of property L.R. No. 209/3898 Nanyuki Road, Industrial area, Nairobi. By a charge dated 5th November 2002 the plaintiff charged his said land to the defendant to secure a loan given to the defendant's customer. The plaintiff was a guarantor by a deed dated 1st November 2002 for the said facility. The plaintiff pleads in the plaint that the said charge is irregular. The defendant, following the default of its customer, scheduled a sale of the suit property on 26th May 2006. The plaintiff at that time paid the defendant Kshs 5.8 million. Following that payment the defendant demanded an amount of Kshs 4.1 million representing interest charge on the loan facility. The plaintiff pleads that the afore stated charge failed to provide for the interest chargeable for the facility. Further that the defendant has failed, despite request, to supply bank statements to the plaintiff of the loan facility yet the defendant now seeks to sell plaintiff's property by 19th October 2006. The plaintiffs final prayers are for a permanent injunction to restrain the defendant from selling the suit property; a declaration that the charge is null and void and unenforceable; a declaration that the defendant's claim for interest is null and void, illegal, punitive unreasonable, unenforceable and inequitable, a declaration that plaintiff is discharged from his liability with the loan facility; an order for refund of amount paid by the plaintiff to the defendant an order of discharge of the charge over the suit property.

The plaintiff filed a chamber summon at the time of filing the plaint. The chamber summons was heard exparte on 6th October 2006 when the same was certified as urgent and ordered to be heard inter partes on 11th October 2006. On the day of hearing inter partes the defendant was served but failed to attend the hearing. The plaintiff in the affidavit in support deponed to matters in the plaint and further stated that the charge was witnessed by Oyoo Wagunda Advocates when attestation can only be done by an individual advocate rather than a firm of advocate and further the plaintiff stated that as at the date of such attestation there was no name of Oyoo Wagunda in the Roll of Advocates nor did such a person hold a practicing certificate. It was further submitted that the address shown as the plaintiff's address in the charge was infact not the plaintiffs. Plaintiff's counsel stated from the bar that he is holding in his client's account Kshs 2.8 million, which he is instructed by the plaintiff to release to the defendant once the

defendant confirms the correct amount of interest payable. Plaintiff relied on the case of **SHAH – V – GUILDERS INTERNAITONAL BANK LTD [2003] KLR** on it's holding as thus: -

“Banks which fail to stipulate particular rates of interest in lending agreements run the risk that courts will fall back on Section 26 [1] of the Civil Procedure Act and exercise discretion in awarding interest.”

Plaintiffs counsel in attempt to make full disclosure on behalf of the plaintiff stated that the plaintiff had filed a previous suit and under that suit sought an injunction which was dismissed on 19th July 2005. That, that previous suit was based on a claim that there was duress whereby the defendant obtained plaintiff's guarantee to guarantee the defendant's bank manager friend. Plaintiffs counsel withdrew that suit and filed this present suit.

The evidence adduced by the plaintiff was uncontroverted. The plaintiff has put to question the validity of the charge document, the basis of sale of the suit property. The plaintiff has averred that the charge was witnessed by a person who is not in the Roll of Advocate nor was he a holder of the practicing certificate. The plaintiff has further averred that he has paid the defendant Kshs 5.8 million whereas he had guaranteed for kshs 4.5 million. In assessing all the uncontraverted evidence presented before the court I find that the plaintiff has undoubtedly shown a prima facie case with a probability of success and I am satisfied that if the suit property is sold the plaintiff will suffer loss not capable of compensation by an award of damages I am therefore of the view that the plaintiff is entitled to prayers sought in his afore stated chamber summons. The court grants the following orders: -

(1) That a temporary injunction is hereby issued restraining the defendant by itself, its servants and/or agents from auctioning alienating, disposing off or in any way interfering with the plaintiff's ownership and or possession of L.R. No. 209/3890 I.R. 32478 Nairobi, pending the determination of this suit.

(2) The plaintiff is awarded costs of the chamber summons dated 6th October 2006.

MARY KASANGO

JUDGE

Dated and delivered this 17th day of October 2006.

MARY KASANGO

JUDGE