

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Case 516 of 1999

KENYA RE-INSURANCE CORPORATION.....PLAINTIFF

VERSUS

JUSTUS GACHIMU NGUNIA & PHILLIS NYAMBURA..... DEFENDANTS

J U D G E M E N T

The Plaintiff, **KENYA REINSURANCE CORPORATION LINTIED**, having discontinued its suit as against the 2nd Defendant, **PHILLIS NYAMBURA**, its claim as against the 1st Defendant, **JUSTUS GACHIMU NGUNIA**, is essentially only for Kshs.817,109/30 plus interest at the rate of 24% per annum from 1st October, 1998 until payment in full, or at any other rate as the court may deem just, and costs of the suit. This is as per the amended plaint dated 12th April, 2002. The aforesaid sum is pleaded as due and outstanding upon an advance made to the 1st Defendant. The 1st Defendant did not enter appearance or file defence and interlocutory judgment was entered against him on 19th October, 2001. The Plaintiff therefore proceeded *ex parte* to prove its case. It called two witnesses, **JANE FLORENCE OTIENO (PW 1)** and **LUCY RINTANGU (PW 2)**.

PW1 was the acting corporation secretary of the Plaintiff. She produced in evidence various documents to the effect that the 1st Defendant was the Plaintiff's employee from 1982 to 1985; that he resigned his employment, which resignation was accepted by the Plaintiff; that when he resigned the 1st Defendant owed the Plaintiff the sum of Kshs.160,073/00 on account of a loan advanced to him by the Plaintiff for purchase of a plot of land; and that the 1st Defendant undertook in writing through his lawyer to continue repaying the loan as agreed. However, further testified PW1, the 1st Defendant defaulted on the repayments and a demand for full payment was made of him but that he never responded. By a letter dated 13.8.1993 he was informed that interest rates upon his loan had been raised. In conclusion PW1 testified that by a letter dated 15.10.1998 a final demand for the outstanding sum of Kshs.761,107/95 was made. Again the 1st Defendant did not respond, and so this suit was filed. PW1 did not produce any loan documents. She said the same were lost.

PW2, an accounts clerk working with the Plaintiff, testified that the 1st Defendant had been advanced by the Plaintiff a staff loan to purchase a piece of property. He mortgaged the same property to the Plaintiff as security for payment of the said loan. PW2 did not produce the mortgage documents. She said that they had been lost. She further testified that at some point the board of directors of the Plaintiff decided to raise the rate of interest upon the 1st Defendant's loan from 5% p.a. to 24%p.a. in accordance with the mortgage documents. She (PW2) prepared a statement of the 1st Defendant's account for the years 1985 to 1999 (inclusive) and that as at November, 1999 the 1st Defendant owed Kshs.1,118,350/10. Suit was filed in May, 1999.

I have considered the evidence placed before the court. I am satisfied on balance that the Plaintiff advanced to the 1st Defendant a staff loan and that at the time that he resigned his employment in February, 1985 he still owed the Plaintiff the sum of Kshs.160,073/00 towards the principal and interest. I am also satisfied that the loan had been advanced at the agreed rate of interest of 5% per annum. Without the loan or mortgage documents the court is not able to determine if the Plaintiff was entitled to unilaterally raise that rate of interest from 5% p.a. to 24% p.a. I am therefore not satisfied that the Plaintiff is entitled to interest at that latter rate. I note that the sum claimed includes interest calculated at 24%.

I will enter judgment for the Plaintiff against the 1st Defendant for the principal sum of Kshs.160,073/00. This was the sum that he owed when he left the Plaintiff's employment in February 1985. There shall be interest upon that sum at the contractual rate of 5% per annum from 1st March, 1985 to 3rd May, 1999 when suit was filed. Thereafter there shall be interest at court rates until payment in full. The Plaintiff shall also have the costs of the suit. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF JULY, 2005.

H.P.G. WAWERU

JUDGE