

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

Civil Case 134 of 2001

DANIEL KIPLAGAT BOR PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION DEFENDANT

R U L I N G

Daniel Kiplagat Bor who is the plaintiff herein instituted this suit against the Agricultural Finance Corporation (A.F.C.) on 11/6/2001. He prays for inter alia a permanent order of injunction to restrain AFC from disposing his property known as SINYERERE/KIPSAINA/BLOCK 2/KESSOGON/42 ('the subject land'). Apart from general damages, also prays for an order to compel AFC to take accounts and /or to reschedule his loans.

Briefly, the undisputed facts of this case are that the plaintiff obtained two loan facilities from AFC during the years 1981 and 1985 and though he does not disclose the amounts so obtained, he however claims to have remitted a sum of Kshs. 60,000/- as loan re-payment. He alleges that AFC has continued to illegally charge interest on the outstanding loan balances, which he claims led to the accumulation of the loan sums to a figure of Kshs. 804,872/80, which in turn led to the advertisement for sale of the subject property, an action which again he claims is illegal as he had not created a charge over the said.

At the time when he instituted this suit he simultaneously filed a chamber summons and applied for orders to restrain AFC from selling the subject property in the aforementioned scheduled auction which orders he obtained at the interim stage but the said orders were not extended thereafter.

On its part, AFC claims that he defaulted in the repayment of both loan facilities, each of which was to be repaid within a year; that he had undertaken to secure the loans by creating a charge over his property, and that as it is legally authorized, it created a charge over the subject property, upon learning that he had obtained the relevant Title document. It however denies that he re-paid a portion of the loan and avers that he has declined to do so despite requests and reminders.

AFC has now moved this court, seeking orders to have the plaint in the suit against it struck out for not disclosing any reasonable cause of action. It bases its application on several grounds, but mainly that the plaintiff who has been advised of the status of his loan accounts severally, has failed to redeem the loans; that he cannot succeed in the suit, as he failed to obtain restraining orders at the interlocutory stage, and that in the circumstances he has not set out a proper case for the grant of a mandatory injunction or any of the other reliefs which he seeks in his suit.

It was the submission of Mr. Gicheru learned counsel for AFC that the plaintiff admits that he was granted a financial accommodation by AFC, but that he did not charge the suit property to the defendant; that does not seek any declaratory orders at all, nor is her seeking a discharge, and that the suit is bad in law and does not disclose any cause of action against his client.

I have taken submissions of learned counsel into account. I do also note that though the plaintiff was duly served with the application, he did not make any efforts to oppose it, nor did he appear in court on the day when the application was set down for hearing.

Nevertheless, it is quite clear that he has not controverted AFC's averments as pertains to his indebtedness, the fact that the charge over the subject property was created with his knowledge and

acquiescence. It cannot therefore be an issue that he is indebted to AFC or that the charge as created was legal, and in my mind, that would explain why he did not seek an order to declare the said charge null and void, or even to have the same discharged, and in the circumstances, that would explain why his averment on its illegality is not supported by any of the prayers in his plaint. The position in law is that “*there would be no point in seeking an injunction, if the basis for seeking such an injunction is not prayed for in the plaint*” (**Robert Entwistel and others and the Registered Trustees of Nairobi Baptist Church and others C.A. (Nai) 312 of 1999 (Unr. 120/ 1999)**).

I find that the plaint does not disclose any reasonable cause of action against AFC. A suit which does not disclose a cause of action against a defendant should not remain on the records, and in the circumstances this application is hereby allowed, and I do order that the plaint be struck off. A suit without a plaint is a non-starter and I thus dismiss the suit with costs.

The applicant shall have the costs of this application.

Dated and delivered at Eldoret this 11th day of July 2005.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Konuche for the applicant/defendant

No appearance for the plaintiff/respondent