

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 103 OF 1996

NATIONAL BANK OF KENYA LTD.....PLAINTIFF

VERSUS

GIDEON ONDIEKI MARANGA.....DEFENDANT

JUDGMENT

The Plaintiff, by a plaint dated 22nd February, 1996 commenced suit against the Defendant seeking judgment for Kshs.1,724,477.45 due and owing by the Defendant to the plaintiff as at 31st January, 1996 being the balance of money and/or over draft allowed and paid to the use of the Defendant by the Plaintiff as Bankers for the Defendant at the Defendant's request at Nakuru. The Plaintiff also prayed for bank charges and interest at Bank rates of interest calculated on daily balances at monthly rests from 1st February, 1996 until payment in full plus costs and interest at court rates.

The plaint was filed by Jones & Jones Advocates and Konosi & Company Advocates entered appearance for the Defendant on 25th April, 1996 and filed a defence on 13th May, 1996. The Defendant, in his statement of defence, denied owing the plaintiff the sum of Kshs.1,724,477.45 and averred that he was granted a loan of Kshs.900,000/- which was secured by a legal charge over Titles Nos. MAJOGE/BOMBABA/1821 and 2073 and had been making regular payments. He therefore stated that the suit was premature and ought to be stayed until the plaintiff had first exercised its statutory power of sale over the two aforesaid properties.

On 29th November, 2000 M/S Muthanwa & Company Advocates filed a Notice of change of advocates for the plaintiff in place of Jones & Jones Advocates. The matter was heard on 22nd January, 2004 and the plaintiff called one witness, Mr. Joshua Nauwankas, a Debt Recoveries Officer based at the plaintiff's Nakuru Branch. He testified that the Defendant was a customer of the plaintiff who opened a current account with the bank in January, 1993 and applied for a loan in March of that year.

A loan of Kshs.900,000/- was granted to the Defendant and was secured by a first charge on the Defendant's 2 properties as aforesaid.

Evidence produced during the trial showed that he drew out the full loan sum in March and April, 1993 but he did not begin his loan repayment until 30th October, 1993. By the time he made the last payment on 30th May, 1995 he had repaid a total of Kshs.318,181/-.

The Plaintiff sent a statutory notice of sale of the charged properties on 31/1/95 and later instructed M/S Pave Auctioneers to realise the securities. The auctioneers conducted an auction of the properties but there were no bidders as the securities were rural properties.

The Plaintiff attached the Defendant's motor vehicle registration number KUA 480 which was sold for Kshs.56,000/- and only Kshs.30,181,60 was credited into the loan account. The witness told the court that as at the date of the hearing the amount due and owing by the defendant to the Plaintiff had risen from Kshs.1,724,477.45 to Kshs.7,735,413.85.

The Defendant did not attend court to defend himself. The Plaintiff's evidence is therefore unchallenged. I am satisfied that the Plaintiff has proved its case on a balance of probabilities and therefore I enter judgment for the plaintiff against the Defendant as prayed in the plaint.

DATED, SIGNED & DELIVERED at Nakuru this 23rd day of March 2004.

DANIEL K. MUSINGA

AG. JUDGE

23/3/2004