

REPUBLIC OF KENYA

HIGH COURT AT NAKURU

Civil Case No 201 of 1995

NATIONAL BANK OF KENYA LTD.....PLAINTIFF

VERSUS

1. JOHNSTONE AGGREY OCHOLA)

2. THOMAS OCHIENG AJUANG).....DEFENDANTS

J U D G M E N T

The plaintiff's claim against the defendants is as follows:-

Against the 1st defendant, the plaintiff seeks 2,083,802/50 being sum due to the defendant as at 28th February, 1995, being balance of money lent and or overdraft allowed to the 1st defendant with bank charges and interest on daily balances at monthly rates.

Against the 2nd defendant, the plaintiff seeks 4000000/- being sum he guaranteed the 1st defendant on 11th October, 1990, together with interest at Bank rates. The defendants filed a joint defence in which they denied owing any sums of money as loan, overdraft or guarantee to the defendant.

Despite being served the defendants did not appear for the hearing of the suit.

The plaintiff called its Debt Recovery Officer who produced an account opening document showing that the 1st defendant opened a current account with them on the 3rd July, 1990. It was Exhibit 1. He also produced a loan application by the 1st defendant in which he applied for 400000/- loan. It was Exhibit 2. That the 1st defendant was offered the loan and sent the terms and conditions of the same by the letter of offer Exhibit 3. He did provide a guarantor, the 2nd defendant who charged his property as security. The charge was exhibit 5 and it limited sum guaranteed to 400000/-. The witness produced statements of account showing that the said sum was credited into the defendant's account and same withdrawn by him. It was never repaid. The statements as Plaintiff exhibit 6 and they speak for themselves. There was a demand for sum owed by letter to the 1st defendant dated 16th January, 1991. The debt stood at 697,273/50 at the time. The plaintiff claims that it stands unpaid even by time of the hearing of the suit. The plaintiff also produce letters from its agents Exhibit 8, showing an attempt to release the security of the charged property failed. The plaintiff's case is quite clear that a sum of 400000/- advanced to the 1st defendant and guaranteed by the 2nd defendant was received by the 1st defendant and never repaid. The defendants merely denied sum was ever received and alternatively that it was fully repaid.

The defendants did not however substantiate their defence. The evidence by the plaintiff was unchallenged. I am fully persuaded on a balance of probabilities that the plaintiff did advance a loan of 400000/- to the 1st defendant on his application. I am persuaded that the 2nd defendant was his guarantor and in that regard charged his property to the plaintiff bank but limited his guarantee

to 400000/-. The money was never repaid. The only criticism I have against the plaintiff bank is why delay so long to sue for recovery of the loan, and why take so long to prosecute the suit?

I do rule that the plaintiff has proved its case on a balance of probabilities. I will enter Judgment in favour of the plaintiff as prayed for in the plaint but with an order that interest awarded is simple not

compound interest.

Orders accordingly. Right of Appeal.

Dated 6th March, 2004 at Nakuru.

JESSIE LESIIT
JUDGE