



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC APPEAL CASE NO. 3 OF 2018

SPEED CAPITAL LIMITEDAPPELLANT

Versus

JOSEPH ONGONDO NGANI.....1ST RESPONDENT

MARGARET ANYANGO ONGONDO.....2ND RESPONDENT

(Being an appeal from Judgment of Chief Magistrate's court at Migori Courts delivered on 9th May 2017 by Honourable R. ODENYO Senior Principal Magistrate)

RULING

1. The instant ruling in lieu of Judgment, is informed by my considered observation infra.
2. The appellant, Speed Capital Ltd through Kinyanjui, Kirimi and Company Advocates generated this appeal by way of a memorandum of appeal dated 12th June 2018 duly filed in court on 13th June 2018 and based on grounds 1 to 5 set out on it's face. I find it superfluous to reproduce the grounds herein. In that regard, the appellant has proposed therein that, interalia, that this appeal be allowed,
3. The appellant's counsel filed submissions dated 20th June 2020 on 29th July, 2020. The respondents' counsel Ng'ani and Oluoch Advocates, filed theirs dated 1st September 2020 on 8th September 2020. It was further to this court's orders and directions of 12th March 2020.
4. Besides, it has emerged from paragraph 5 through to the prayers in the plaint dated 22nd July 2016 and filed before the trial court that the dispute relates to a charge. The 1st respondent obtained a loan of Kshs. 500,000/= from the appellant repayable within a year with interest and the appellant held security in form of titles of land reference Nos.
 - i. LR NO. Kamagambo/Kamenya/623,625,627 and 663.
 - ii. LR NO. Kamagambo/Kamwango/1289
 - iii. LR NO. Kanyamkago/Kawere 1/1009
5. It common baseline that the 1st respondent offered the title deeds in respect of the said parcels of land for the loan as disclosed in paragraphs 4 to 11 of the respondent's statement of defence dated 5th August 2016 duly filed in court on 8th August 2016. The respondents intended to raise a counterclaim and a preliminary objection to the suit as shown at paragraphs 11 and 12 therein.
6. In his ruling rendered on 31st October 2016, regarding a preliminary objection in the suit, the learned trial magistrate was of the considered view that :-

“Thus it is my considered view that the dispute herein is a commercial matter...”
7. In another ruling delivered on 26th April, 2017, in respect of a temporary injunction, the learned trial magistrate noted that contractual obligation between parties as per the loan agreement was not specific on the rated of interest on the loan. Therefore, the calculation of the rate of interest arise therefrom.
8. It is trite law that the tabulation of sums owing on account of a contractual relationship of a banker and lender and determination of

accounting questions, no doubt, rest with the High Court pursuant to Article 165 (3) of the Constitution of Kenya,2010; see **Co-operative Bank of Kenya Ltd =vs= Patrick Kangethe Njuguna & 5 Others (2017) eKLR at paragraphs 40,41 and 42.**

9. In the present suit, the dominant issue in dispute between the parties is the calculation of interest or sums owing to the appellant. Principally, the concern in the matter is the determination of accounting questions hence the matter falls within the jurisdiction of the High Court as noted in section 165 (3) and Cooperative Bank case (supra). The same does not fall within the jurisdiction of this court as envisioned by **Article 162 (2) (b) of the Constitution (supra)**, section 13 of the ELC Act,2015 (2012), section 150 of the Land Act,2016 (2012) and in **Republic =vs= Karisa Chengo and 2 others (2017) eKLR.**

10. On that score, this court must down its tools herein; see the Locus Classicus case of **Owners of the Motor Vessel M.V Lilian “S” =vs= Caltex Oil (K) Ltd (1989) 1 KLR 1.**

11. To that end, I bear in mind the provisions of sections 1A, 1B, 3, 3A, 5, 16 and 18 of the Civil Procedure Act (Chapter 21 Laws of Kenya) and section 3 of the Environment and Land Court Act 2015 (2012) aligned to **Article 159 (2) (b) (d) and (c) of the Constitution (supra).** So, I proceed to order and direct that this appeal be and is hereby transferred to the High Court of Kenya at Migori for hearing and determination. Mention before the Honourable Judge, Migori High Court on 31st March 2021 for directions.

It is so ordered.

DELIVERED, DATED and SIGNED at MIGORI this 26th day of January 2021.

G.M.A. ONGONDO

JUDGE

Ruling delivered electronically in presence of :-

Ms. Tuwei holding brief for Kirimi learned counsel for the appellant

Mr. Ngani learned counsel for the respondent.

Mr. Tom Maurice – Court Assistant