

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 143 OF 1995

NATIONAL BANK OF KENYA LIMITED.....PLAINTIFF

VERSUS

KUTO KANDIE.....DEFENDANT

JUDGMENT

The Plaintiff, National Bank of Kenya Limited, filed suit against the Defendant, Kuto Kandie praying for judgment to be entered against the Defendant for:

(i) the sum of Kshs 1,457,616.00

(ii) Bank charges and interest on principal sum at the Bank rate of interest calculated on daily balances at monthly rates from 1st of February 1995 until the payment in full.

(iii) Costs of and incidental to this suit and interest thereon at the Court rates of 14% (Section 27(2) C.P.A. (19/85) and Value Added Tax thereon,

(iv) Any other relief that this Court may deem fit to grant.

The Defendant upon being served with the Plaint duly entered appearance and filed defence. This case was fixed for hearing on the 7th of July 2004 before this Court. The Defendant's Advocates on record Mssrs Sergon & Company Advocates were served with the hearing notice of the above date on the 29th of January 2004. The Defendant was further personally served with the hearing notice for the said hearing date. Neither the Defendant nor his Advocate attended Court on the date fixed for hearing. This Court, having been satisfied that the Defendant was duly served but failed to attend Court, ordered the case to proceed in the absence of the Defendant.

The Plaintiff called one witness, Mr Chali Akuku Bwana. Mr Bwana works in the Advances Department of the Plaintiff's Nakuru Branch. It was his testimony that the Defendant was a customer of the Plaintiff bank, the Defendant having opened an account with the Plaintiff. The Defendant filed the requisite forms for opening an account with the Bank. The documents filled by the Defendant were produced by the Plaintiff as the Plaintiff's Exhibit No. 1 (a) (b) and (c). The witness testified that the Plaintiff was claiming the sum of Kshs 1,457,616/= which amount arose when the Defendant was allowed to overdraw his current account. The Plaintiff produced copies of the cheques used by the Defendant to overdraw the account. The copies of the said cheques were marked as Plaintiff's Exhibit No. 2.

The Plaintiff sent the statements to the Defendant informing him of the state of his account. The last statement was sent to the Plaintiff on the 30th of December 1995. The said last statement indicated that the Defendant owed the Plaintiff the sum of Kshs 1,975,940/20. The bundle of statements were produced as Plaintiff's Exhibit No. 3. Mr Bwana testified that the initial amount increased because the said amount attracted interest at the bank rates. He further testified that since being advanced the said sum of money, the Defendant had not made any effort to repay the same. The Plaintiff prayed that judgment be entered against the Defendant for the sum of Kshs 6,821,285/15 which is the amount outstanding as at the time the case was being heard.

I have read the pleadings filed in this case. I have also considered the oral and documentary evidence adduced by the Plaintiff. It is not in dispute that the Defendant opened a current account with the Plaintiff

Bank. According to the evidence of the Plaintiff, the Defendant was allowed to overdraw his account. He overdrew his account using cheques drawn on his own account. It was further the Plaintiff's testimony, that the said amount overdrawn attracted interest. The Defendant was sent statements reflecting the increased amounts. The Defendant made no effort to repay the said amount and to date, the initial amount advanced has escalated to the sum of Kshs 6,821,285/15 as at the date the case was being heard. The Plaintiff produced documentary evidence in support of its case. The said documents were produced in evidence as Plaintiff's Exhibits 1, 2 and 3. I have considered the said documentary evidence. I am satisfied that the Plaintiff has proved its case on a balance of probabilities. The evidence adduced by the Plaintiff was not controverted. The Plaintiff has proved that the Defendant was advanced money, withdrew the same but failed to repay the said amount advanced to him.

In the premises therefore, Judgment is entered for the Plaintiff for the sum of Kshs 6,821,285/45 interest will be charged on the said amount as prayed in the Plaint.

The Plaintiff will have the costs of the suit.

DATED at NAKURU this 23rd day of September, 2004.

L. KIMARU

AG. JUDGE