



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL CASE NO. 31 OF 2018

SUPINDER SINGH SAGOO.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK.....RESPONDENT

JUDGEMENT

[1] At all material times, the Plaintiff herein, **Supinder Singh Sagoo**, was a customer of the Defendant Bank, **Kenya Commercial Bank**, holding Account Number 270-770-315. The Plaintiff averred in his Plaint dated **12 July 2001** that, by an agreement made on **2 May 1995** between the parties, the Bank agreed to extend an overdraft facility to him with a limit of **Kshs. 500,000/=**; and that pursuant to that arrangement, the Plaintiff offered the title documents for his property number **Eldoret Municipality Block 23 (Kingongo/351)** (hereinafter, “the suit property”) and two Fixed Deposit Receipts for **Kshs. 216,425** and **Kshs 187,467/=**, as securities for the overdraft.

[2] It was further the averment of the Plaintiff that the overdraft facility was renewable and was hence renewed yearly until **1999** when the Defendant, for no apparent reason, declined to renew the same despite several applications by the Plaintiff for renewal. By that time, the overdraft account stood at **Kshs. 495,339/=**, as against the Plaintiff’s deposits with the Defendant of **Kshs. 403,892**. The Plaintiff further averred that, other than the two deposits aforementioned, he held a Fixed Deposit Receipt for **Kshs. 140,800/=** in respect of funds deposited with the Defendant’s subsidiary bank, known as **Kenya Commercial Finance Company Limited (KCFC)**. Thus, according to the Plaintiff, the Defendant was under obligation to apply the funds held under the two Fixed Deposit Receipts in settling the overdraft account, and had no reason to resort to the sale of the suit property.

[3] The Plaintiff’s cause of action therefore is that, on or about **25 June 2001**, the Defendant, without any reasonable or justifiable cause, advertised the suit property for sale in the Daily Nation newspaper for the recovery of a debt of **Kshs. 495,339/=**, yet it had at its disposal Fixed Deposit Receipts amounting to **Kshs. 544,692/=**; which amount was sufficient to offset the overdraft account, and leave some **Kshs. 49,353/=** to his (Plaintiff’s) credit. He averred that, even as at the time the suit was filed, no steps had been taken by the Defendant to liquidate the Fixed Deposit Receipts.

[4] The Plaintiff further averred that the suit property is registered in their joint names with his late father and therefore cannot possibly be disposed of before the succession cause filed in respect thereof is finalized. It was for the foregoing reasons that the Plaintiff filed this suit seeking the following reliefs:

[a] A permanent injunction to restrain the Defendant, its agents or servants from selling, disposing, alienating or in any other way dealing with the parcel of land known as **Eldoret Municipality Block 23(Kingongo)/351**;

[b] General damages and discharge of the Plaintiff’s parcel of land known as **Eldoret Municipality Block 23(Kingongo)/351**;

[c] Costs of the suit and interest at bank rates.

[5] The Defendant denied the Plaintiff’s claim and averred, in its Statement of Defence filed herein on **27 July 2001** that it was within its rights to realize the securities held by it in whatever manner it deemed fit as all of them were offered by the Plaintiff as a precondition for the overdraft. It was further the contention of the Defendant that, since the Plaintiff had incessantly defaulted in servicing the account, it was within its rights as a chargee to serve the requisite statutory notice on the Plaintiff before offering the suit property for sale; which it did. Thus, it was the Defendant’s prayer that the Plaintiff’s suit be dismissed with costs.

[6] The Defendant thereafter amended its Defence on **15 August 2013** to include a Counterclaim for **Kshs. 811,151.15**, being the arrears due on the overdraft facility, plus compound interest at 35% per annum from **2 August 2001** till payment in full. The record shows that the Amended Defence and Counterclaim was only filed on **8 June 2015**, and that the Plaintiff filed a Reply thereto and a Defence to Counterclaim on **12 November 2015**, denying that it was in arrears to the tune of **Kshs. 811,151.15** or any other sum, or at all. The Plaintiff

also denied that the Defendant is entitled to compound interest at the rate of 35% per annum, terming the same as exorbitant and unenforceable.

[7] This suit was before the Environment & Land Court, Eldoret and was partially heard there. It was not until **25 June 2018** that it was transferred to this Court for a *de novo* hearing following the decision of the Court of Appeal in **Co-operative Bank of Kenya Limited vs. Patrick Kangethe Njuguna (2017) eKLR**. Thus, in support of the Plaintiff's case, he testified on **13 December 2018** as **PW1**. He adopted his witness statement dated **19 May 2015** and stated that, as a customer of the Defendant, he applied for and was granted an overdraft facility to the tune of **Kshs. 500,000/=** on the terms and conditions set out in the Letter of Offer dated **22 May 1997**, which he produced as the **Plaintiff's Exhibit 1**. **PW1** testified that some of the conditions in terms of security were a charge over the suit property, known as **Eldoret Municipality/Block 23(Kingongo)/351** and Fixed Deposit Receipts. He also mentioned that the facility was renewable annually.

[8] **PW1** told the Court that his relationship with the Bank went well until **1999** when the Bank refused to extend the overdraft facility and proceeded to serve him with a notice dated **30 August 1999** (marked the **Plaintiff's Exhibit No. 3** herein), stating that the facility had expired. That the Defendant then commenced the process of selling the charged property to recover a sum of **Kshs. 495,339/=**. His posturing was that this move, on the part of the Bank, was unjustified, granted that the Bank held his Fixed Deposits to the tune of **Kshs. 544,692/=**. He accordingly filed this suit to have the Bank restrained from its misguided course of action; and for wrongly reporting him as a loan defaulter to the Credit Reference Bureau; hence his prayer for damages. **PW1** relied on the Documents which he produced herein as the **Plaintiff's Exhibits 1-10**.

[9] On behalf of the Defendant, **Joseph Barngetuny (DW1)**, the Defendant's Credit Manager, testified on **17 July 2019**. He adopted his witness statement dated **18 December 2017** and confirmed that the Letter of Offer dated **22 May 1997** was issued by the Bank to the Plaintiff in response to his request for an overdraft facility. He produced a copy of that letter as **Defence Exhibit No. 1** along with the Charge instrument dated **23 June 1997 (Defence Exhibit 2)**, the Letter of Lien dated **1 July 1997 (Defence Exhibit 3)**, the Letter of Guarantee (**Defence Exhibit 4**) and a copy of the title document for the suit property as **Defence Exhibit 5**; and confirmed that the facility was initially for one year but was renewable annually.

[10] It was the testimony of **DW1** that the overdraft expired in **1999**; and that upon its expiry, the bank declined the Plaintiff's request for renewal and instead called the funds. He confirmed that the amount due from the Plaintiff at the time was **Kshs. 495,353/=**. He added that the Bank thereupon used the fixed deposit funds at its disposal in the sum of **Kshs. 140,000/=** to pay the overdraft, as it was entitled to, but that they were insufficient to clear the debt; and that it thereupon resorted to selling the charged property. **DW1** further testified that, since the Plaintiff failed to promptly settle the debt, it had risen to **Kshs. 811,121/=** by the time the Counterclaim was filed. It thereafter stopped charging interest. Thus, **DW1** was of the posturing that the Plaintiff is truly and justly indebted to the Defendant. He, accordingly, prayed that the Plaintiff's suit be dismissed with costs, and that the Defendant's Counterclaim be allowed and orders given as prayed.

[11] In the light of the foregoing, the parties agreed on the following issues for determination:

[a] Whether the Defendant was under contractual duty to extend the overdraft facility of **Kshs. 500,000/=** granted to the Plaintiff beyond **1999**;

[b] Whether at the time the Defendant declined to renew the overdraft facility the Plaintiff had overdrawn his account to the tune of **Kshs. 495,339/=**;

[c] Whether at the same time, the Plaintiff had a fixed deposit of **Kshs. 403,892/=** with the Defendant and a further fixed deposit of **Kshs. 140,800/=** with the Defendant's subsidiary, **Kenya Commercial Finance Company Ltd**;

[d] Whether by reason of the fixed deposits the Defendant is duty bound to liquidate the deposits and apply them towards reducing the Plaintiff's indebtedness to the Defendant;

[e] Whether the Defendant liquidated the fixed deposit account of **Kshs. 140,800/=** held by the Plaintiff at **Kenya Commercial Finance Company Ltd** and whether, if so liquidated, it was liquidated without notice to the Plaintiff;

[f] Whether the Defendant was required to issue notice to the Plaintiff notifying the Plaintiff of the intention to liquidate the fixed deposit account of **Kshs. 140,800/=**;

[g] Whether the Defendant was estopped from charging interest on the overdraft on account of its failure to liquidate the fixed deposit accounts in **May 1999**;

[h] Whether the Defendant, by failing to immediately liquidate the fixed deposits held by the Plaintiff acted negligently in the circumstances;

[i] Whether the Defendant is entitled to execute its statutory power of sale over the suit property;

[j] Whether the fact that the Defendant held the fixed deposit accounts constitutes a bar to the exercise of its statutory power of sale over the suit property;

[k] Whether the Defendant is bound in law to liquidate the fixed deposits before exercising its statutory power of sale in respect of the suit property;

[l] Whether the Plaintiff can exercise its statutory power of sale over the suit property notwithstanding that succession proceedings to

bring on board the personal representative of the co-owner of the suit property have not been commenced;

[m] Whether the Plaintiff is entitled to injunctive orders as prayed in the Plaint;

[n] Whether the Plaintiff is entitled to a credit balance of **Kshs. 49,353/=** from the Defendant and general damages for breach of fiduciary relationship between the Plaintiff and the Defendant;

[o] Whether the Defendant is entitled to claim from the Plaintiff the sum of **Kshs. 811,151.15** plus interest at the rate of 35% per annum as from **2 August 2001** till payment in full;

[p] What is the Court's order on costs?

[12] In the written submissions filed herein on **17 October 2019**, Counsel for the Plaintiff's Counsel, **Mrs. Chumba**, condensed the foregoing issues to the following:

[a] Whether the Defendant's actions or omissions amounted to negligence;

[b] Whether the Defendant had a fiduciary relationship with the Plaintiff to act in the best interests of the Plaintiff;

[c] Whether the Defendant is barred by operation of the law from charging interest on an inactive account;

[d] Whether the Defendant's Counterclaim is statute-barred.

[13] On the authority of **Karak Brothers Company Limited vs. Burden** [1972] ALLER; **Donough vs. Stevenson** [1932] ALLER and **Selangor United Rubber Estates Ltd vs. Cradock (No. 3)** [1968] 1 WLR 1555, Counsel urged the Court to find that the Defendant owed a duty to the Plaintiff to exercise reasonable care and skill in carrying out its duties in connection with the subject overdraft facility to safeguard the best interest of the Plaintiff; and that the Defendant failed to discharge that duty. In the submission of **Mrs. Chumba**, the Defendant acted recklessly by failing to liquidate the fixed deposits within a reasonable time; and yet expects the Plaintiff to pay interest for the intervening period. She accordingly prayed that a finding be made in favour of the Plaintiff and proposed an award of **Kshs. 1,900,000/=** as general damages for breach of contract.

[14] Counsel also took issue with the fact that, in its Counterclaim, the Plaintiff asked for compound interest at 35% per annum, arguing that this is prohibited by **Section 44** of the **Banking Act, Chapter 488** of the **Laws of Kenya**. She also pointed out that the Amended Defence and Counterclaim was filed without leave some 14 years after the institution of the suit, and is therefore untenable. Thus, Counsel prayed that the Defendant's Counterclaim be dismissed with costs.

[15] On his part, **Mr. Maina**, Counsel for the Defendant, proposed the following issues for determination:

[a] Whether the Plaintiff defaulted in paying the overdraft;

[b] Whether the Defendant was entitled to sell the charged property upon default by the Plaintiff;

[c] Whether the Defendant acted with due diligence and in the best interest of the Plaintiff in realizing the securities;

[d] Whether the Counterclaim is properly before the Court;

[e] Whether the parties herein are entitled to the prayers sought, and to what extent?

[16] Counsel submitted that, since there is no dispute that the Plaintiff owed the Defendant **Kshs. 495,339/=** as at **May 1999**, there is sufficient proof of default on the part of the Plaintiff. Reliance was placed on **Kirinyaga Complex Academy Ltd vs. Co-operative Bank of Kenya Ltd & Another** [2019] eKLR for the submission that the Plaintiff is estopped from denying that the Defendant is entitled to the sum of **Kshs. 811,151.15** claimed in the Counterclaim. On the Defendant's statutory power of sale as a chargee, it was the submission of **Mr. Maina** that the Plaintiff voluntarily gave his title deed for the suit property as security and duly signed the Letter of Offer, the Charge, Letter of Lien and Guarantee, thereby authorizing the sale of the suit property in the event of default. Consequently, it was open to the Defendant to sell the suit property as it proposed to do before this suit was instituted by the Plaintiff.

[17] On whether the Counterclaim is competently before the Court, Counsel relied on **Wycliffe Biketi Wakwabubi vs. Asman Maloba & 4 Others** [2019] eKLR and urged the Court to note that the prayer to strike out the Counterclaim has only been raised at the end of the trial through submissions; and therefore is belated. He further urged the Court to be guided by the principles laid down in **D.T. Dobie & Co. Ltd vs. Muchina** [1982] KLR 1 and find that striking out a pleading is a draconian measure that should not be taken at this late stage of the proceedings. Thus, **Mr. Maina** urged for the dismissal of the Plaintiff's claim and prayed for the Counterclaim to be allowed as prayed with costs.

[18] I have given careful consideration to the pleadings, the evidence adduced herein by the parties as well as their written submissions. As rightly pointed out by learned Counsel, most of the facts are not in dispute. It is not in dispute that the Plaintiff was a customer of the Defendant's or that on the **6 May 1997**, the Plaintiff applied to the Defendant for an overdraft facility of **Kshs. 500,000/=** for the purpose of purchasing spares for resale and to generally boost his working capital. The application was allowed and a Letter of Offer dated **22 May 1997** issued by the Defendant, setting out the terms of the facility. The Letter of Offer was exhibited herein and marked the **Plaintiff's**

Exhibit No. 1. and it shows that, by way of security, the Defendant asked for a legal charge for **Kshs. 325,000/=** over **L.R. Eldoret Municipality/Block 23 (Kingongo)/351**; Fixed Deposit Receipt with **KCFC**, with an aggregate of over **Kshs. 230,000/=** and a Guarantee for **Kshs. 500,000/=** by the Plaintiff.

[19] It was further stipulated in the Letter of Offer that interest would be charged at a variable rate of 32.5% per annum, with a default rate of 15% per annum above the rate aforesaid. The Defendant also reserved the right to set-off or combine all or any accounts of the Plaintiff; and to consolidate all securities held on any account, as securities for all of the Plaintiff's liabilities. Moreover, the Defendant made it clear that the continuance of the facility would be dependent upon the account being conducted to its satisfaction at all times; and on the understanding that the facility would be repayable in full on demand should Defendant deem it advisable to make such demand.

[20] The Plaintiff did not only accept those terms but also furnished the requisite security to the satisfaction of the Defendant. A copy of the Charge was attached to the Letter of Offer. The parties are also in agreement that the Plaintiff's account was put in funds and that the facility was renewed by mutual agreement of the parties until the year 1999. Both parties relied on the letter dated **30 August 1999** by which the Defendant notified the Plaintiff thus:

“...Please note that your above facility expired in our books on 31/5/99. Kindly give us further instructions on the same...”

[21] Although the Plaintiff expressed the desire to have the facility renewed, the Defendant was not interested in any such renewal. Instead the Defendant called in the sums then due on the Plaintiff's overdraft account, amounting to **Kshs. 495,339.25**, as confirmed by the Bank Statement marked the Plaintiff's Exhibit No. 4. There is therefore no dispute that as at **May 1999**, when the overdraft facility was called in, the Plaintiff was indebted to the Defendant in the sum of **Kshs. 495,339.25**; and when the same was not forthcoming from the Plaintiff, the Defendant proceeded to liquidate one of the Fixed Deposit Receipts held by the Plaintiff with the Defendant's subsidiary, **KCFC**, to the tune of **Kshs. 140,800/=**. As the said amount could not clear the sums due to the Defendant, it instructed **Jomuki Enterprises** to effect the sale of the charged property.

[22] The Plaintiff conceded that it was thus indebted to the Defendant and from the material availed before the Court the Defendant cannot be faulted for declining to renew the facility. Indeed, the Letter of Offer was explicit that:

“...The continuance of the facilities to the date sanctioned is, of course dependent on the accounts being conducted to our entire satisfaction at all times and on the understanding that the facilities are repayable in full on demand should the bank deem it advisable to make such demand.” (Emphasis supplied)

[23] Similarly, the Plaintiff did not raise any issue with the liquidation of the Fixed Deposit Receipt as aforesaid; having offered the same as collateral for the overdraft. What he took issue with was the fact that, instead of promptly liquidating all the three Fixed Deposit Receipts, whose amount exceeded the overdraft sums by some **Kshs. 49,353/=**, the Defendant belatedly liquidated only one and then quickly resorted to exercising its statutory power of sale. In the premises, the only issues for determination herein, in my considered view, are as follows:

[a] Whether the Defendant acted with due diligence and in the best interest of the Plaintiff in the way it handled the securities;

[b] Whether the Counterclaim is properly before the Court;

[c] Whether the parties are entitled to the prayers sought.

[a] On Due Diligence and Best Interest of the Plaintiff:

[24] There is no gainsaying that a bank is under obligation to always exercise reasonable care and skill in the discharge of its duties to its customers. This was well explicated in **Selangor United Rubber Estate Ltd vs. Craddock** (supra) thus:

“...a bank has a duty under its contract with its customer to exercise “reasonable care and skill” in carrying out its part with regard to operations within its contract with its customer. The standard of reasonable care and skill is an objective standard applicable to bankers. Whether or not it has been attained in any particular case has to be decided in the light of all relevant facts, which can vary almost infinitely.”

[25] The Plaintiff adduced credible evidence herein to demonstrate that, in addition to the title for the suit property, it had given the Defendant three Fixed Deposit Receipts (FDRs) as security for the overdraft, worth **Kshs. 544,692/=**. While it was the evidence of **DW1** that only one of the FDRs was liquidated, the Plaintiff presented documentary evidence to back up his assertion that two such FDRs were indeed liquidated, yielding a total of **Kshs. 342,204.80** to his credit. One of the documents is the Bank Statement marked the **Plaintiff's Exhibit 7(a)**. It confirms that a payment was made into the overdraft account on **18 May 2000** of **Kshs. 140,800.40** thereby reducing the amount due from **Kshs. 706,842.70** to **Kshs. 566,042.30**. The second statement was produced herein by the Plaintiff as his **Exhibit No. 5**; and it confirms that another payment of **Kshs. 201,404.40** was made on **19 March 2002** by which the debt was reduced from **Kshs. 811,151.15** to **Kshs. 609,746.75**. Hence, if there was any Counterclaim to be made in **2015**, as was purportedly done herein then it could only be for **Kshs. 609,746.75** and not **Kshs. 811,151.15**, for these two documents are Statements of Account prepared and supplied to the Plaintiff by the Defendant.

[26] The pertinent question that arises from the foregoing, and which the Plaintiff asked, is why did it take so long for the Bank to liquidate the FDRs? A careful consideration of the evidence adduced by the Defendant reveals no justification for this tardiness. **DW1** also conceded that the Bank did not liquidate the third FDR, in the sum of **Kshs. 216,425.45** and is retaining the funds to date. It is noteworthy that, as from **31 August 2001**, **KCFC** merged with the Defendant, whereupon the Defendant took over the undertaking, goodwill, book-debts, assets and liabilities of **KCFC**. The Plaintiff produced an advertisement to that effect that was carried in the Daily Nation of **12 November 2001** as his

Exhibit 9. It is noteworthy too, that although **DW1** explained that the Bank could only liquidate the FDRs that were offered as security, the Letter of Offer dated **22 May 1997** was not specific to any particular FDR. It simply referred to “...FDR with **KCFC Ltd Eldoret with an aggregate of over Kshs. 230,000/=...**” It is inexplicable, therefore, that the Defendant accounted for only **Kshs. 140,800/=** as the first payment made on **18 May 2000**. Likewise, the Defendant failed to account for the third FDR, which it has admittedly retained to date (per the Defendant’s letter dated **10 July 2000** marked the **Plaintiff’s Exhibit 8** and the evidence of **DW1**), yet, in the Letter of Offer it reserved the right to set-off and/or consolidate the Plaintiff’s accounts and securities to its benefit vide Paragraph 2 on page 2 of the said Letter. That paragraph states thus:

“The Bank reserves the right to set-off or combine all or any accounts of the borrower in their own right whatever their nature. The right to consolidate all securities held on any account, as security for all liabilities is also held.”

[27] It is also instructive that, in cross-examination, **DW1** conceded thus on behalf of the Defendant:

“...The Bank acts to the best interest of the customer. It appears the Bank had more funds on account of the Plaintiff than what he owed the Bank. We however could only go for the FDRs that had been pledged by the Plaintiff to the Bank. The Bank reserved the right to set off or consolidate accounts of the borrower. This is provided for in the Letter of Lien...”
(Emphasis added)

[28] It is in the light of the foregoing that I am satisfied that, in this instance, the Bank is to blame for its tardiness and therefore cannot expect the Plaintiff to pay anything more, either by way of principal or interest in respect of the subject overdraft facility. Moreover, since the Defendant had more funds in its custody for purposes of consolidation and set off, it had no justification whatsoever for attempting to sell the charged property.

[b] On the validity and merit of the Counterclaim:

[29] As has been pointed out herein above, the Counterclaim was introduced herein by way of the Amended Defence and Counterclaim filed on **15 August 2013**. Counsel for the Plaintiff argued, albeit belatedly, that the said pleading was filed 13 years after the institution of the suit without leave of the Court. And so, I have perused the record and noted that, indeed, the application for leave to amend was filed on **22 April 2002**, and that the same was allowed by consent on **25 July 2013**. It was thereafter that the Defendant filed its Amended Defence and Counterclaim. In the circumstances, the arguments by **Mrs. Chumba** that the pleading is incompetent are untenable.

[30] As to the merit of the Counterclaim, having found that the Defendant had the Plaintiff’s funds in excess of the sums due from him in respect of the overdraft, the Defendant’s Counterclaim cannot stand. To the contrary, the Defendant owes the Plaintiff some **Kshs. 49,353/=** by way of overpayment.

[c] On whether the Plaintiff is entitled to General Damages:

[31] Having found that the Plaintiff has made out its case against the Defendant, and that Defendant’s Counterclaim is devoid of any merit, it would follow that the Plaintiff is entitled to the orders prayed for by him in his Plaint dated **12 July 2001**. I note that one of the prayers is for general damages, in respect of which Counsel for the Plaintiff proposed an award of **Kshs. 1,900,000/=**, at **Kshs. 100,000/=** per year for the 19 years that the suit has been pending. She also urged the Court to consider that the Defendant is still holding the third FDR to date.

[32] Needless to say that damages are available as a remedy for breach contract. In Anson’s **Law of Contract 28th Edition** the opinion is given that:

“Every breach of contract entitles the injured party to damages for the loss he or she has suffered. Damages for breach of contract are designed to compensate for the damage, loss or injury the claimant has suffered through that breach. A claimant who has not, in fact, suffered any loss by reason of the breach, is nevertheless entitled to a verdict but the damages recoverable will be purely nominal...”

[33] Thus, the principle evinced in **Victoria Laundry (Windsor) Ltd vs. Newman Industries Ltd (1949) 2 KB 528** is that:

“In cases of breach of contract, the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach...What was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or, at all events, by the party who later commits the breach.”

[34] In this case, the Plaintiff charged his title to the Defendant. The property is yet to be sold and therefore no loss has been suffered by him. He cannot lay any claim to the third FDR for it is part and parcel of the **Kshs. 544,692/=** which the Defendant had in its hands and on the basis of which he claims overpayment of **Kshs. 49,353/=**. In the same vein, his assertion that he has been unable to obtain credit due to the fact that the Defendant wrongfully reported him as a defaulter to the Credit Reference Bureau were also not concretized by way of evidence. In the premises, I would award the Plaintiff a nominal sum of **Kshs. 100,000/=** only as general damages for the breach.

[35] In the result, I hereby enter Judgment in the Plaintiff’s favour against the Defendant and grant the following orders:

[a] That the Defendant do pay the Plaintiff general damages for breach of contract in the sum of **Kshs. 100,000/=** together with interest thereon from the date hereof till payment in full;

[b] That the Defendant to refund to the Plaintiff the sum of **Kshs. 49,353/=** being the overpayment in respect of the overdraft account;

[c] That a permanent injunction be and is hereby issued to restrain the Defendant, its agents or servants from selling, disposing, alienating or in any other way dealing with the parcel of land known as **Eldoret Municipality Block 23(Kingongo)/351;**

[d] That the Defendant be and is hereby ordered to forthwith discharge the charge registered against the Plaintiff's parcel of land known as **Eldoret Municipality Block 23(Kingongo)/351;**

[e] That costs of the suit be borne by the Defendant.

It is so ordered.

DATED, SIGNED AND SIGNED AT ELDORET THIS 20TH DAY OF FEBRUARY 2020

OLGA SEWE

JUDGE