



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 381 OF 2018

BANK OF BARODA KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

SRUNGARAPU RAJA SEKHAR.....DEFENDANT/RESPONDENT

JUDGMENT

1. **Bank of Baroda (Kenya) Limited** (the Plaintiff) filed this case by way of Originating Summons. The defendant is **Srungarapu Raja Sekhar**.
2. It is not denied that on **10th April 2014** the plaintiff, at the request of the defendant, granted the defendant a credit facility of upto **Ksh 33,300,000/=**. The security of that facility is a legal charge over Apartment number H1 erected on **Land Reference number 1870/11/286 Nairobi**. The defendant, in addition to that security provided personal guarantee, to the plaintiff for up to Ksh 33,300,000/=.
3. The defendant was required to liquidate the loan by **84 equal monthly instalments of Ksh 396,428.55**. The repayments were to be made one month after disbursement of the loan.
4. It is the plaintiff's contention that the defendant has failed/neglected or refused to service the loan facility leading the loan account to fall into arrears and the defendant has failed to rectify the default. The plaintiff annexed to the originating summons loan account statements of the defendant.
5. The plaintiff stated, through the affidavit of Philip Burh that statutory notices dated **11th August 2016** were sent to the defendant together with the Notification of sale and auctioneers notices.
6. Although the defendant was served with those notices he failed to pay the amount due on the loan account.
7. The plaintiff after having the charged property valued instructed Garam Auctioneers to auction the property. The bid at that auction was below the forced sale value. It is therefore the plaintiff's view that attempt to sell the charged property by public auction has failed and the plaintiff by the action before court seek to sell the charged property by private treaty.
8. The defendant by his replying affidavit dated 12th September 2018 alleged that he had paid a substantial amount towards the loan with the plaintiff. He alleged to have paid Ksh 15 million. He also deponed that the interest rate applied to the account by the plaintiff was oppressive and unreasonable. The defendant also denied having received statutory Notices of sale of the charged property.
9. By a further affidavit of Collin Ngetich, the plaintiff denied modifying the offer letter and stated that the charged property was the only security the plaintiff held.
10. Further it was deponed that although the defendant had paid in total Ksh 15 million, which amounts are reflected in the defendant's loan account, those payments had not been made regularly and consequently the defendant was indebted to the plaintiff for Ksh 27,176,860.65 as at 25th April, 2018.
11. The deponent further reiterated that the defendant was served with statutory Notices of sale and that the auction was advertised in Daily Nation Newspaper.
12. Further the plaintiff attached to the affidavit instruction of the defendant dated 29th November 2017 whereby the defendant sought to engage a broker to sell the charged property on his behalf.

13. The plaintiff finally deponed that it continues to suffer prejudice because of the rise of interest and that it should therefore be permitted to sell the charged property by private treaty.

14. The court directed the Originating Summons be heard by affidavit evidence and also ordered the parties to file their written submissions. Only the plaintiff filed written submissions.

15. I have considered the affidavit evidence and the submissions of the plaintiff. I find the allegations of the defendant are unsubstantiated. On the other hand the plaintiff has proved it afforded the defendant a loan which loan is still outstanding and accumulating interest. The plaintiff also demonstrated it attempted to auction the charged property but that auction dismally failed to reach the reserved price.

16. In my view the interest of justice are best served by granting the prayers sought. That way the plaintiff will ensure that the loan is substantially paid to avert the increase of interest. The plaintiff will however have to comply with the provisions of section 98(5) of the Land Act No. 6 of 2012 which provides:

“(5) In a sale by a private contract, the chargee shall be entitled to rely on a valuation carried out by a valuer who is registered with the institute of Surveyors of Kenya and the report shall in the absence of a manifest error, be conclusive in relation to the market price: Provided that the valuation report shall at the time of sale be not more than six months old.”

17. The plaintiff is in my view entitled to the costs of this suit having prevailed.

18. There shall be judgment for the plaintiff as follows:

a. Bank of Baroda (Kenya) Limited is hereby allowed to sell property, comprising of all that parcel of land known as **APARTMENT NUMBER H1 ERECTED ON LAND REFERENCE NUMBER 1870/11/286 NAIROBI**, by private treaty.

b. The buyer of that sale by private treaty shall be registered as the owner of all that parcel of land known as **APARTMENT NUMBER H1 ERECTED ON LAND REFERENCE NUMBER 1870/11/286 NAIROBI** on the lease registered as Number L.R. 155845/1.

c. The plaintiff shall before embarking on the sale by private treaty comply with the provisions of section 98(5) of the Land Act No. 6 of 2012.

d. The plaintiff is awarded the costs of the suit

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of October, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court in the presence of:

Sophie.....**COURT ASSISTANT**

.....**FOR THE PLAINTIFF**

.....**FOR THE DEFENDANT**