



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION

HCC. CASE NO. 397 OF 2010

EQUITY BANK LTD.....PLAINTIFF

VS.

DAVID GITAU MWANGI.....1ST DEFENDANT

ROSE WANJIRU.....2ND DEFENDANT

(Being sued in their capacity as properties of

EMAGRAFA INSURANCE AGENCY.....3RD DEFENDANT

JUDGEMENT

1. By a Plaint dated 5.5.2010 the Plaintiff claims Ksh.12,257,824.81 plus interest at 24% P.A and costs of the suit.
2. The Plaintiff avers that by a letter of offer dated 15.7.2008 the Plaintiff and Defendant executed at the Defendant request loan facilities for Ksh. 9,897,730.
3. The terms and conditions agreed therein were to the effect that the Defendants would repay the loan amount in 24 equal installments of Kshs.494,136 per month. The interest rate to be applied was 18% pa.
4. Further, if there was delay or default in repaying loan amount, the Defendant would be liable to pay an additional interest at a rate of 6% p.a above the agreed interest rate. The security offered were Motor Vehicles;-
 - KAY 200F
 - KAS 485D
 - KAU 961S and
 - KAU 963S
5. The loan was to be paid from the income generated from the operation of the aforesaid motor vehicles. The money was disbursed on 3.7.2008 but the Defendant neglected and/or refused to pay the loan advanced.

6. As at 10.2.2000 the outstanding amount was Kshs.12,257,824.81 thus the demand was issued of intention to sue which the Defendant ignored prompting the filing of the instant suit.

7. Upon service with summons, the Defendants filed a joint defence dated 22.7.2010 on 27.7.2010. In their defence, they pleaded that;

- paragraph (3) - they strongly deny contents of paragraph 4,5, and particulars a – e of the Plaintiff.
- They also denied paragraph 6 and 7 of the Plaintiff.

8. The Defendants were served with Plaintiffs bundle of documents but on their side failed to file any documents at all to support their case.

9. The matter came for hearing on 2.12.2015 but despite service, they failed to appear and thus the matter proceeded *ex parte* after Court was satisfied with service.

10. The Plaintiff testimony was tendered by Peter Kungu Credit Manager of the Plaintiff Bank at Community Branch. He adopted his statement filed on 23.4.2012 and reiterated the content of the statement and the averments in the Plaintiff.

11. He produced the bundle of documents and Plaintiff's exhibit. He briefly testified that the Defendants applied for loan vide application dated 7.7.2008 item 1 of the bundle which was duly executed. The loan amount was Kshs.9,900,000/=. The letter of offer item 2 in the bundle indicated the amount offered was Kshs.9,897,730/= which Defendants 1 and 2 signed.

12. He confirmed that Motor vehicle KAS 485D, KAUS 961S, KAU 935S AND KAK 100F were offered as securities. The loan was to be repaid in 24 equal monthly installments at an interest rate of 18% and an additional rate of 6% penalty for default.

13. Loan account statements item 3 in the bundle indicated that on 30.7.2008 Kshs.9,897,730 was disbursed into 3rd Defendant's account. There was irregular payments up to the month of November 2008 when the Defendants completely stopped payments.

14. By 10.2.2010 the loan had escalated to Kshs.12,257,824.81. The same could not be recovered as the Defendants hid the motor vehicles offered as securities thus prompting the lodging of the instant suit .

15. The Defendants did not tender any evidence nor appear during the hearing of the suit despite the service of the hearing notice to their advocates on record. Their defence plea as earlier alluded to was a mere denial and a farce without any document in support.

16. After going through the pleadings, the testimony offered and the submissions on record by the Plaintiff's Advocate, I find the only issue is **whether the Plaintiff has proved then instant scase on balance of probabilities.**

17. From the record, testimony and documents tendered, the Court is satisfied that Ksh.9,897,730/= was advanced to the Defendants. They had signed the application for a loan of Kshs.9,900,000/= and a letter of offer for Kshs.9,897,730 prior to the disbursement of the loan.

18. It is also discernible from the documents tendered in form of statement of account that the last payment of loan was in November 2008 and at the time of stoppage of payment of the loan, the same had escalated to Ksh.12,257,824 which continues to attract interest at a rate of 24% p.a.

19. In the case of **MRAO LTD Vs. FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS (2003) KLR P.125** the court held;

“...if courts are going to allow debtors to avoid paying their just debts by taking some of the defences I have seen in recent times...banks will be crippled if not driven out of business altogether and no serious investors will bring their capital into a country whose courts are a haven for defaulters”.

20. Perusal through the joint defence lodged by the Defendants, one is left with no other option but to dismiss it as mere sham and full of mere denials. The Defendants ought to have explained the facts that their signatures appeared in the loan form and letters of offers. Why don't they claim that either they are not their signatures, or they are forgeries or were procured by fraud, coercion or undue influence?

21. The court therefore finds that the Plaintiff has proved claim herein on balance of probabilities and allows the same as follows;

1. Judgment is entered for the Plaintiff in the sum of Kshs,12,257,824.81.
2. Interest is granted at a rate of 24% p.a with effect from 1.2.2010.
3. Costs of the suit and interest therein at court rates.

Dated, signed and delivered in court at Nairobi this 5th day of February, 2016.

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C. KARIUKI

JUDGE