

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT 246 OF 2009

CONSOLIDATED WITH HCCC NO 209 OF 2012

CHEPCHIRCHIR BOMET FRASER..... PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA..... DEFENDANT

RULING

1. **High Court Civil Case No. 246 of 2009** filed on the 19th August 2009. The plaintiff sued National Bank of Kenya and sought prayers for a declaration that the defendant (Bank) held no Legal charge over **LR No.15333/3 and LR 15333/1 Rongai** upon grounds that the plaintiff discharged the Loans and advances granted to the late K. Bomet deceased.

This position is reiterated in the Amended plaint filed on the 12th October 2009. The defendant in its Amended defence filed on the 2nd November 2009 denied that the loans were fully paid. Looking at the cause of action, there is no dispute that the matter is purely a commercial matter involving a charger and a chargee. The High Court is the forum which the necessary jurisdiction to hear and determine the dispute in this case.

2. In **High Court Civil Case No. 209 of 2012** the plaintiff is Chepchirchir and Nancy Jeruto Bomet against National Bank of Kenya and two others. I have seen the plaint. The case filed in the Environment and Land Court. The cause of action as may be deduced from the claim concerns the same cause of action in respect of properties stated earlier in **HCCC No.246 of 2009**, which were then under threat of being sold by the defendant bank in exercise of its chargees power of sale arising from failure to pay off the loan advanced to the plaintiffs as stated in **HCCC No. 246 of 2009**. Other parties however were enjoined in this case and their defence was that they were not parties to the contracts between the plaintiff and the Bank. In my view the cause of action in both suits concern the validity of the charge documents giving rise to the purported sale of the properties stated by the chargee.

3. There is no doubt therefore that the disputes in both case are purely commercial in nature.

The Environment and land Court Judge Hon. Lucy Waithaka in **HCCC No. 209 in 2012**, vide directions issued on the 4th June 2013 made a direction that these two cases be consolidated and be heard by the High Court which court has jurisdiction to hear and determine disputes of commercial and civil nature notwithstanding that orders issued by the High Court lead to sale of land and more so in recovery of loans advanced where the land was offered as security and charged to secure the chargees interests. I have no reason to depart from the above directions.

4. The two cases will therefore proceed for hearing before the High Court. Parties have already agreed that the lead file shall be **HCCC No. 246 of 2009**. They may proceed to take hearing dates in the High court.

Dated, signed and delivered in co this 10th day of November 2016

JANET MULWA

JUDGE