



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

**CIVIL SUIT 414 OF 2004**

**FRANCIS JOSEPH KAMAU ICHATHA.....PLAINTIFF**

**VERSUS**

**HOUSING FINANCE COMPANY OF KENYA LIMITED.....DEFENDANT**

**ORDER**

1. On 4<sup>th</sup> August, 2014, this Court delivered its judgement in this case in which it found that the Defendant was not entitled to ‘penalty interest’, interest on arrears’ or ‘default charges’; that the variations of the rates of interest to the plaintiff’s detriment were unlawful and that any application of interest rate in excess of 18% and 19% per annum with respect to the first and second charges were unlawful; that the Defendant’s calculations were not free from error; that the Defendant was not bound to only realize the charged property as it was at liberty to extend indulgence to the plaintiff without compromising its rights under the charges in question; that the Defendant was properly entitled to any lawfully due charges based on the contractual documents; that the breach of the provisions of the **Banking Act** had not been proved to the required standards.

2. Consequently this court directed the parties herein to agree on and appoint an independent accountant to take accounts between the parties herein and file his report within 45 days from the date of his appointment. In default of such agreement each party was directed to appoint an accountant and the two appointed accountants were to appoint an umpire and the three were to go through the documents in possession of the parties and prepare a report for filing in this matter within 45 days of the appointment of the umpire.

3. Pursuant to the foregoing the Plaintiff appointed **Interest Rates Advisory Centre (IRAC)** while the Defendant appointed **PKF Kenya** as their respective accountants. The two accountants appointed **Muchekehu Nyakang’o & Co** as the umpire.

4. The said umpire did file its report before this Court on 15<sup>th</sup> January, 2015 which report was duly signed by the accountants for the respective parties. According to the said report, the findings were discussed and agreed to by the accountants representing both parties.

5. In the said report it was found that the interest on loan was overcharged by Kshs 14,451,355.59 and consequently the amount due to the borrower (read the plaintiff) is Kshs 8,813,820.89.

6. That being the position, judgement is hereby entered for the plaintiff against the Defendant in the said sum of Kshs 8,813,820.89. The said sum shall accrue interests at court rate from the date of the judgement herein till payment in full. The costs of this suit are awarded to the plaintiff to be paid by the Defendant.

7. It is so ordered.

**Dated at Nairobi this 2<sup>nd</sup> February, 2015**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**The Plaintiff in person**

**Mr Wetangula for Mr Ayisi for the Defendant**

**Cc Patricia**