



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC LAND CASE NO. 202 OF 2017**

**HADIJA ZUBER BAKARI.....PLAINTIFF**

**-VERUS-**

**RAFIKI MICROFINANCE BANK LIMITED.....DEFENDANT**

**JUDGEMENT**

1. The plaintiff's claim against the defendant proceeded undefended. Vide a plaint dated 8<sup>th</sup> June 2017, the plaintiff sought the following relief:

**1. An order compelling the Defendant to furnish her with all the relevant documents to enable her have the charge dated 2<sup>nd</sup> December, 2015 be discharged. These documents include:-**

- a. The original provision certificate of title of plot number 4610/III/MN, title number CR 40945/1.**
- b. The original deed plan of plot number 4610/III/MN, title number CR 40945/1.**
- c. A discharge of charge (in triplicate) duly signed and witnessed by the Defendant's authorized attorneys and or agents.**
- d. The said attorneys and or agents' certified copies of identity cards and PIN certificates.**
- e. A certified copy of the Defendant's certificate of incorporation.**
- f. A certified copy of the Defendant's PIN certificate.**
- g. Any other necessary relevant document.**

**2. Costs of the suit and interest.**

**3. Any other and/or further relief that this Court deems fit to grant.**

2. The summons was served on 19.6.2017 but the defendant did not file any appearance within the timelines provided. On 29.1.2018, the plaintiff testified in Court. She adopted as part of her evidence her written statement filed in Court on 24.6.2017. She informed the Court that she stood guarantor to Vitalis Mwangima who obtained a loan from the defendant using her title No 4610/III/MN.

3. As at 30.8.2016, Vitalis was unable to pay the loan so the witness said she proceeded to deposit the sum of Khs 1,112,000 with the defendant's advocates. The plaintiff stated the defendant promised to discharge the security once this money was paid. She continued that inspite of making the payments as advised, the defendant failed to release the title documents of the suit property to her. She produced copies of the two cheques showing the payments made. She also produced a copy of the charge document as well as a provisional title showing the property is hers. The witness said she has made personal follow up with Kelengeni branch to no avail. She thus urged the Court to grant her the orders sought.

4. As stated earlier, these facts put by the plaintiff have not been controverted. In their submissions, the plaintiff urged the Court to grant the prayers supporting their case by the decisions in **Nancy Njoki Kinyanjui vs Equity Bank Ltd (2017) eKLR** and **Jane Wangui Kinuthia vs Barclays Bank Ltd (2007) eKLR** where the Judges ordered for the release of the title documents each of the plaintiffs having demonstrated that the guaranteed sum had been fully repaid.

5. In the case before Court as per the charge document, a sum of Kshs One Million Only (Kshs 1,000,000=) was advanced to Vitalis Mwangima Allen on 2<sup>nd</sup> December 2015. On 6<sup>th</sup> June 2016, the defendant made a demand to the said Vitalis to pay the outstanding sum of Kshs 1,049,030.00 which they said was the arrears. This letter was copied to the plaintiff. On 29<sup>th</sup> August 2016, the plaintiff's advocate wrote to the defendant – Mtwapa branch enclosing two bankers cheques Nos. 004471 & 004472 for the sum of Kshs 1,112,000 in settlement of the loan. The plaintiff's advocate also requested for the discharge of the charge and release of the title documents from the defendant. Further the deposit slips of the cheques were also produced. The plaintiff also settled the fee note as demanded by the bank's advocates vide the bankers cheque dated 3.10.2016 for the sum of Kshs 80,000=.

6. Upon payment of the debt due to the defendant, they prepared and forwarded the discharge of charge forms for execution by the defendant which to date the plaintiff avers has not been executed. The plaintiff has thus demonstrated that indeed she has settled the amount due and demanded by the defendant together with the legal expenses. The Court wonders why the defendant has not released the title document together with a duly executed discharge of charge as requested by the plaintiff.

7. I am therefore satisfied that the plaintiff has indeed proved her case on a balance of probabilities and is entitled to the orders sought in her plaint. Accordingly I do allow her prayers seeking release of her title documents as set out in prayer (1) of the plaint. She is also entitled to costs of this suit since she was made to file the suit for release of her title documents having demanded for the same but the defendant ignored the demand.

**Dated, signed & delivered at Mombasa this 30<sup>th</sup> May 2018**

**A. OMOLLO**

**JUDGE**