



**Munyao & another v Standard Chartered Bank (K) Ltd (Civil Case 40 of 2017) [2024] KEHC 10331 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 10331 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL CASE 40 OF 2017  
F WANGARI, J  
MAY 30, 2024**

**BETWEEN**

**PATRCIK MUNYAO ..... 1<sup>ST</sup> PLAINTIFF**

**KENYA HAULAGE AGENCY LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**STANDARD CHARTERED BANK (K) LTD ..... DEFENDANT**

**RULING**

1. The parties herein entered into a consent in respect of settlement of the payment of a decretal amount. The only issue outstanding are costs of Kshs.800,000/- which the defendant claims is due to it from the plaintiff whereas the plaintiff submits that the consent for payment of Kshs.10,000,000/- was all inclusive.
2. Directions were taken that the application be disposed of by way of written submissions. Both parties duly filed their submissions and cited various authorities in support of their rival positions. The Plaintiff's submissions are dated 5<sup>th</sup> February, 2024 whereas the Defendant's submissions are dated 12<sup>th</sup> February, 2024. Am grateful for parties' compliance with the directions. The court shall make reference to the said submissions and authorities when rendering itself on the merit or otherwise of the issue before it.

**Analysis and Determination**

3. At the onset, it is not in dispute that the parties herein had renegotiated the loan amount due from the Plaintiff to the Defendant and settled at Kshs.10,500,000/-.
4. While relying on the case of National Bank of Kenya Ltd v Pipelastik Samkolit (K) Ltd [2001] eKLR, both parties agree that a court cannot re-write a contract for parties.



5. Clause 3 of the Charge dated 14<sup>th</sup> February, 2012 is titled “ Expenses incurred by the Bank. 3.1 states as follows, “All costs charges and expenses incurred by the Bank in obtaining or attempting to obtain payment of any moneys hereby secured or properly incurred by the Bank in relation to or under this charge including (without limitation) such payments as the Bank may consider expedient from time to time to make and are hereby authorized to make to any person whether the Chargor personally or to the Directors of the Chargor as the case maybe or anyone acting at the request of the Chargor or a receiver or a subsequent mortgagee or to any person acting on the instructions of the Bank in connection with maintaining repairing, amending, altering or improving the Mortgaged property and all such further and other moneys shall by virtue of sub clauses 3.2 of this present clause be deemed to be included in the expression “expenses” shall..... AND legal costs and disbursements paid or incurred by the Bank under this charge and falling within the definition of “expenses” herein before contained shall as against the chargor be deemed to include every sum which would be allowed to the advocates of the Bank in a taxation as between the advocate and own client to the intent that the chargor shall afford to the bank a complete entitlement and unqualified indemnity in respect thereof.”
6. Clause 4 proceeds to state, “Secured Amount: The amount secured by this charge shall be the aggregate of the prescribed maximum debt or so much thereof as may from time to time be outstanding all interest from time to time due or payable to the Bank or covenanted to be paid to the bank and all costs taxes liabilities obligation charges and expenses incurred by the Bank from time to time in relation to this charge (hereinafter together called “The mortgage debt.”)(Emphasis mine).
7. The provisions of Clause 3 sets the pace and paves way for Clause 4 which clarifies the secured amount. This amount includes all costs as it were.
8. I concur with parties that the court cannot re-write a contract for parties. The Charge dated 14<sup>th</sup> February, 2012 is very clear and the moment the defendant renegotiated the amount due, the it was well aware that the said amount was the secured amount and it included costs.
9. I thus find that this matter is fully settled and that the amount paid of Kshs.10,500,000/- settled the entire secured amount and there is no outstanding amount or costs due from the Plaintiff to the Defendant.

Orders accordingly

**DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 30<sup>TH</sup> MAY, 2024.**

**F. WANGARI**

**JUDGE**

In the presence of:

Gwahalla Advocate h/b for Gikandi Advocate for the Plaintiff

Otieno Advocate for Defendant

Barile - Court Assistant

