



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND ADMIRALTY DIVISION**

**CIVIL CASE NO. 712 OF 2012**

**FINA BANK LIMITED .....PLAINTIFF**

**-VERSUS-**

**COAST CEREALS KENYA LTD..... 1ST DEFENDANT**

**SAMUEL KABUYA MUIGAI..... 2ND DEFENDANT**

**FRANCIS NDERITU MICHURI.....3RD DEFENDANT**

**RAHAB WANGECHI NGUYO.....4TH DEFENDANT**

**ALICE MUTHONI MUCHIRI.....5TH DEFENDANT**

**JUDGMENT**

1. The plaintiff filed this suit against the five defendants on **15th November 2012**. The defendants were served with the court processes but failed to file Memorandum of Appearance and a defence within the prescribed period. At the request of the plaintiff, interlocutory judgment was entered on **21st May 2018** and this case proceeded by way of formal proof before me on **18th July 2018**.

2. The uncontroverted case against the defendants is that the parties entered into an asset finance and hire purchase contract for the 1st defendant to acquire Mercedes Benz Actross Prime Mover. The 1st defendant was financed in that regard with the sum of **Ksh. 5, 346,360** which was secured by personal guarantees of the 2nd to the 5th defendants.

3. It is the plaintiff's case that the 1st defendant defaulted in the payment of the agreed instalments and the amount now outstanding and owed to the plaintiff is **Ksh 8,156,390.95** plus interest until payment in full.

4. The plaintiff's witness in evidence stated that when the default of the payment of the instalments occurred, it gave instructions to Regent Auctioneers to reposes the Prime Mover but that they were unsuccessful because they could not trace it.

5. The plaintiff's evidence was uncontroverted and it was supported by documentary evidence. The plaintiff therefore has proved its case on a balance of probability that the defendants are indebted to it.

6. Accordingly, I enter judgment for the plaintiff as follows:

***a. There shall be judgment for the plaintiff against all the defendants jointly and severally for Ksh 8,156,390.95 plus interest at court rate from the date of filing this suit until payment in full.***

***b. All the defendants shall pay the plaintiff's cost in this suit.***

***c. It is so ordered.***

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>th</sup> day of October, 2018.**

**MARY KASANGO**

**JUDGE**

**Judgment read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendants

**MARY KASANGO**

**JUDGE**