



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO.406 OF 2017

GIULIO D'ERME.....PLAINTIFF/RESP

VERSUS

ROBERT CIAVOLELLA.....1ST DEFENDANT

MARIANGELA BELTRAMI.....2ND DEFENDANT

R U L I N G

The Plaintiff filed application dated 21st March 2018 seeking entry of summary judgment against the Defendants for a sum of thirty five thousand Euros (€35,000).

Grounds on the face of the application are that the Defendant is indebted to the Plaintiff and has no reasonable defence; that the defence is a mere blanket denial, a sham aimed at delaying judgment in this matter

The application is supported by Affidavit sworn by the Plaintiff.

Plaintiff averred that in the year 2015 Defendants approached him and borrowed him thirty five Euros. That the Defendants were to pay back the money on 15th October 2015.

The Plaintiff avers that on 24th September 2016 the Defendants drew a cheque of twenty two thousand Euros which was returned unpaid.

On 20th April 2017, the Defendants acknowledged being indebted to the Plaintiff to the tune of 35,000 Euros and on 30th July 2017 drew postdated cheques numbered 000030, 000031, 000033 and 000034 all totaling 35,000 Euros. That the cheques were presented to the bank on 14th August 2017 but they were returned unpaid reason being the Defendants had closed the account. The deed of acknowledgment of debt and dishonored cheques are annexed to the Affidavit.

The Plaintiff further avers that on 29th August 2017, the Defendants Advocate expressly admitted that the Defendants were indeed indebted to the Plaintiff and proposed means of settlement. He attached a copy of the letter.

In response, the Defendants filed Replying Affidavit sworn by 1st Defendant on 13th February 2018 and relied on defence, witness statements and defence filed.

He averred that the witness statement extensively and concisely elaborates the circumstances leading to this suit and evidence indicating that both Defendants do not owe the Plaintiff.

He stated that the basis of the application cannot be dealt with at interlocutory stage and that the suit should be subjected to evidentiary test to determine the fate of his defence.

Defence argues that his constitutional right to be heard should not be defeated by this application.

What I wish to consider is whether the Defendants have defence with triable issues. I have perused the pleadings herein and documents attached to the application.

Acknowledgment of debt by the Defendants indicates the amount owing as 35,000 Euros. I have also seen cheques that were returned unpaid

in respect of the amount.

In the letter addressed to Plaintiffs Advocate by the Defendants Advocate, an amount of 22,000 Euros is admitted. Advocates for the Defendants undertook on behalf of the Defendants to pay 10% of the amount admitted being 2,000 Euros. In the letter, the difference is denied.

In respect of the difference, the Defendants allege that the cheques were drawn under duress. I however note that acknowledgement of 35,000 Euros was on 20th April 2017. The 5 cheques of 7000 Euros each were drawn on 30th of August 2017. Cheques in respect of amount acknowledged were done 4 months after acknowledgement of debt. There is no indication that the Defendant was subjected to coercion at the time of acknowledging the debt. The Defendant acknowledged Kshs. 35,000.

In the letter dated 28th August 2017, the Defendant apologized for the issuing dishonored cheques and indicated the the cheques were issued in good faith with the intention to honour the debt. He went further to propose a meeting to discuss payment of monies owed.

From the foregoing, it is quite clear that the Defendant admitted the debt owing to the Plaintiff.

My view is that defence herein is an afterthought aimed at delaying payment of the debt.

I therefore find that the application herein is merited and do allow it.

FINAL ORDERS

1. The Defendants defence is struck out. I do enter summary judgement for the Plaintiff against the Defendants jointly and severally for thirty five thousand Euros (35,000).
2. Interest on (1) above at Court's rate from the date of filing this suit.
3. Costs to the Plaintiff

Ruling Delivered, Dated and signed at Nairobi this 25th day of October, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

LANGAT: COURT ASSISTANT

OKUNDI & CO. ADV: COUNSEL FOR PLAINTIFF/APPLICANT

CHARLES MADOWA: COUNSEL FOR DEFENDANT/RESPONDENT