



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO.390 OF 2017

BANK OF AFRICA KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

GRAND PAINTS LIMITED.....1ST DEFENDANT

MAHAMUD RAJAB ABDULA.....2ND DEFENDANT

ABDULLAH DALLAR RAJAB.....3RD DEFENDANT

HUSEIN RAJAB ABDULLAH.....4TH DEFENDANT

RULING

This is a ruling on the Plaintiff's application dated 5th December 2017. It seeks to strike out the Defendants' defence and enter judgment for the Plaintiff as prayed in the Plaintiff.

Grounds on the face of the application are that, the Plaintiff granted letters of offer to the 1st Defendant which were structured from time to time; and by guarantee and indemnity dated 26th August 2014, the 2nd, 3rd and 4th Defendants jointly and severally guaranteed the sum of Kshs. Ninety five (95,000,000) million each or equivalent in whatever currency denomination plus interest fees costs, charges and expenses upon demand.

That on diverse dates, the Plaintiff has demanded for full payment of the outstanding amount and the 1st Defendant has in the past admitted owing the debt and made promises to pay the same but reneged on its repayment.

That the 1st Defendant has admitted debt of Kshs. 170,303,316.37 and USD 66,514.97 together with interest from 31st August 2017 to be computed in accordance with Plaintiff's commercial rate till payment in full.

That the Defendants' defence is aimed at delaying or obstructing Plaintiff from recovering the claim set out against the Defendants; that the defence constitute bare denial.

The Plaintiff's application is supported by Affidavit sworn by Monica Kamau who works for the Plaintiff as recoveries officer. In paragraph 3 to 7 of the Supporting Affidavit, he set out the facilities advanced to the 1st Defendant, purpose, interest, guarantee/Bonds, terms & conditions and securities.

Demand letters and admissions by the 1st Defendant are listed in paragraph 8 of the supporting affidavit.

ANALYSIS AND DETERMINATION

I have perused and considered averments in the Supporting Affidavit, Plaintiff and documents annexed and defence filed by the Defendants.

What I consider to be in issue is whether defence filed raises triable issues.

On perusal of the file, I note that there is no response to the application nor submissions filed by the Defendants. The Defendants failed to attend court on 3rd July 2018 when this application was scheduled for hearing. The Plaintiff confirmed service filed affidavit of service. On perusal of affidavit of service and hearing notice annexed to it and I confirmed that the Defendants' Advocate was served for hearing of the application on 5th June 2018. The hearing notice was received by Advocate for the Defendants.

The Defendants have not controverted facts averred in the Supporting Affidavit.

Defendants filed defence dated 7th November 2017 on 8th November 2017. On perusal of the defence I note that paragraphs 2 to 11 are mere denials.

Correspondences attached to the Plaintiff show that the 1st Defendant was advanced facilities listed in the Supporting Affidavit herein. Initial and amended letters of offer have been filed.

Correspondences by the 1st Defendant through its Advocates confirm the facilities were advanced. There is no indication of full payment from the 1st Defendant to the Plaintiff.

From the foregoing I find that, defence filed is a mere denial aimed at delaying disposal of this matter.

FINAL ORDER

1. Defence dated 7th November 2017 is hereby struck out.
2. Judgment is entered for the Plaintiff against the Defendants jointly and severally for Kshs. 170,303,316.37 plus USD 66,514.97
3. Judgement against the 2nd, 3rd and 4th Defendants is limited to the amount of guarantee.

Ruling dated, signed, and delivered at Nairobi this 18th day of October, 2018.

.....

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

CATHERINE: COURT ASSISTANT

NJENGA H/B FOR KIGATA: **FOR PLAINTIFF/APPLICANT**

NO APPEARANCE FOR DEFENDANTS/RESPONDENTS