



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 401 OF 2014

KENYA COMMERCIAL BANK LTD.....PLAINTIFF

-VERSUS-

GEOFFREY WANG'OMBE T/A KENBRIT INSURANCE AGENCY.....1ST DEFENDANT

SAM MUCHUKI T/A KENBRIT INSURANCE AGENCY.....2ND DEFENDANT

JUDGEMENT

1. **Geoffrey Wangombe**, the 1st defendant and **Sam Muchuki**, the 2nd defendant, are partners in a business known as **Kenbrit Insurance Agency**. That business had a bank account with **Kenya Commercial Bank Limited**, the plaintiff. That account was No1109271107. The defendants do not deny that the plaintiff honoured two cheque being cheque No.00687 dated **2nd February 2009** for **Kshs.650,000** and cheque No.00693 dated **5th February 2009** for **Kshs.750,000**. Those two cheques were in favour of **St. Paul Junior School Kalimoni**. The defendants do not deny that there was insufficient funds in their account to meet those two cheques.

2. The plaintiff has sued both defendants for the recovery of **Kshs.2,188,041.67** in respect to those payments.

3. The defence raised by the defendants is that the plaintiff without cause 'made' the account to be overdrawn without the defendant's written instructions. That the defendants were unaware that there was insufficient funds in their account and the plaintiff failed to inform them of the same.

4. The only issues for determination in this matter is:

a) Are the defendants indebted to the plaintiff.

b) Who bears the costs.

5. The defendants do not deny issuing the cheques. They also do not deny that their account had insufficient funds to meet those cheques.

6. The defendant in opening their account with the plaintiff authorized the plaintiff to honour all cheques drawn by them and then undertook to pay the plaintiff any amount overdrawn with associated interest, costs, charges and expenses. This undertaking and authorization is obvious in the account opening form signed by both defendant. The undertaking and authorized is in the following terms:

"In consideration of you, Kenya Commercial Bank Ltd, opening and/or continuing at our request a current account or accounts in the name of the firm HEREBY request and authorize you, until any one of us shall give you notice in writing to the contrary, to honour all cheques, guarantees, negotiable instruments or other orders which may be drawn or made or bills accepted or notes made or receipts for money owing by you to the firm signed by any one of us on behalf of the firm or by any person authorized by us on behalf of the firm and to debit such cheques, guarantees, negotiable instruments, orders, bills, notes and receipts to the firm's account or accounts with you whether such account or accounts be for the time being in credit or overdrawn or may become overdrawn in consequence of such debit. We hereby agree to be jointly and severally responsible for the payment of any overdraft or overdrafts of the firm and interest thereon and to be jointly and severally responsible for the repayment of any moneys with interest, costs, charges and expenses owing in any manner whatsoever by the firm to you."

7. From the above it will be seen even if the plaintiff did not inform the defendants that there was insufficient funds in their account that does not absolve the defendants to their liability and the above undertakings.

8. This Court find the defendant jointly and severally liable for the debt of **Kshs.2,188,041.67**. Having so found the costs as provided under Section 26 of the Civil Procedure Act, Cap 21, must follow the event. There is no reason why they should not.

9. I hereby enter judgment for the plaintiff against the defendants jointly and severally as follows:

a) Judgment for Kshs.2,188,041.67 plus interest at Court rate from the 27th February 2012 until payment in full.

b) Cost of the suit to the plaintiff.

DATED, SIGNED and DELIVERED at NAIROBI this 29th day of November, 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