



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 196 OF 2015

MIDDLE EAST BANK KENYA LIMITED.....PLAINTIFF

VERSUS

SUNDIP JAGDISHROY PATEL.....1ST DEFENDANT

HINA PATEL.....2ND DEFENDANT

RULING

1. The plaintiff is seeking summary judgement against the defendants.
2. In the alternative, the plaintiff seeks Judgement on Admission.
3. The claims against the defendants are for Kshs. 25,767,561/14 in respect to an overdraft facility which the plaintiff made available to the defendant, and Kshs. 134,409/84 on the Cheque Discounting Account.
4. Both claims are said to continue to attract interest.
5. The plaintiff has exhibited a Facility Letter dated 3rd February 2012. The facility being offered by the plaintiff was an Overdraft: And the offer was signed by 2 duly authorized Attorneys of the plaintiff.
6. On 14th February 2012, the 1st defendant signed the Acceptance of the offer for the overdraft.
7. The statements of account, produced by the plaintiff reflect the debit balances on the Bank Accounts operated by the defendants, at the Middle East Bank Kenya Limited.
8. As at 29th January 2015 the debit balance in A/c No. 155001 003 was Kshs. 25,767,561/14, whilst the debit balance on the Cheque Discounting Account No. 155001 011 was Kshs. 134,409/84.
9. On 12th February 2015, the plaintiff's advocates, Messrs **NYAUNDI TUIYOTT & Co. ADVOCATES**, sent Demand Notices to each of the 2 defendants. The said Demand Notices specified the debit balances cited above.
10. The defendants denied defaulting in repaying the 2 facilities which the plaintiff provided to them. But there are several letters exchanged between the parties herein, which demonstrate that the defendants had admitted being in default.

11. For example, on 7th May 2012, the 1st defendant wrote to the bank, conceding that his overdraft facility was “*over the limit by Kshs. 7.5 million*”.
12. The 1st defendant promised to regularize his said facility by 25th May 2012, after he would have received some funds which he was then expecting.
13. Obviously, when a bank customer admits that his overdraft facility had been exceeded, and that he intended to regularize it, that is confirmation that the customer was in default.
14. A second example is the 1st defendant’s letter dated 4th September 2013. He shared the bank’s concerns, about the fact that it had taken much longer than had been expected, to regularize the facilities.
15. The 1st defendant was responding to the bank’s letter dated 2nd September 2013, through which the bank had informed the defendants that they owed the bank, the sum of Kshs. 37,427,761/41, as at 30th August 2013.
16. The point I am making is that the 1st defendant did acknowledge severally, that there was a default in meeting his obligations in relation to the overdraft facility.
17. A perusal of the “*Facility Offer*” dated 3rd February 2012 shows that the bank made the said offer, for an overdraft facility to **SUNDIP JAGDISHROY PATEL**. The Facility Offer did not name the 2nd defendant, **HINA PATEL**.
18. Similarly, it is the 1st defendant who executed the Acceptance of the offer dated 14th February 2012.
19. As the 2nd defendant did not execute any Acceptance of the bank’s offer for an overdraft facility, the court is unable to conclude, at this stage, whether or not the 2nd defendant was also liable to the plaintiff, in respect to the loan facility.
20. Meanwhile, it is noted that the 1st defendant acknowledged his indebtedness to the plaintiff, in a number of letters. Having so acknowledged his indebtedness, I find that it would constitute an afterthought for the 1st defendant to now turn round and allege that the debt which he had acknowledged was inclusive of illegal, unscrupulous and unconscionable charges.
21. The admissions embodied in the 1st defendant’s letters were unequivocal. There is no basis in law, upon which the 1st defendant can now seek to qualify his admissions.
22. I therefore grant judgement in favour of the plaintiff, as against the 1st defendant, for the sums prayed in the plaint.
23. The plaintiff is also awarded the costs of the suit, together with the costs of the application dated 9th September 2015. These costs are to be paid by the 1st defendant.
24. Meanwhile, as regards the 2nd defendant, I have found no admission of liability. I have also found insufficient material from the plaintiff, upon which the court could enter judgement against the 2nd defendant. Therefore, the application against the 2nd defendant is dismissed. The plaintiff will pay to the 2nd defendant, the costs of the application dated 9th September 2015.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 12th day of October 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Ochoki for Onyamu for the Plaintiff

No appearance for 1st the Defendant

No appearance for the 2nd Defendant

Collins Odhiambo – Court clerk.