



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 98 OF 2010

CONSOLIDATED BANK (K) LTD.....PLAINTIFF

versus

THIKA DISTRICT TEA GROWERS SACCO

SOCIETY LIMITED & OTHERSDEFENDANTS

JUDGMENT

1. By a plaint dated 18th August 2010 the plaintiff sued the defendant in respect of a loan facility of Ksh. 4,000,000/- as working capital in March 2008. The terms of the said facility provided for an interest of 18% pa and 32 % pa in case of default.
2. The summons to enter appearance was served upon the defendant on 25th August 2010 and on 3rd May 2011 the plaintiff filed an amended plaint in which she added THOMAS MACHARIA GITHINJI SAMUEL, GICHIHI MBOGO and JOHN MUKOI Z. KINYANJUI as 2nd to 4th defendants in their capacity as chairman, treasurer and secretary of the 1st defendant's management committee.
3. On 6th September 2011 Ms DN MBURU & Co Advocates entered appearance for the 2nd and 3rd defendants and on 28th September 2011 the plaintiff requested for judgment in default which judgment was entered on the same date.
4. On 29th February 2012 the plaintiff bill of cost was taxed at Ksh. 188,033.68. From the court record it seems that the initial judgment was entered on 30th September 2010 as prayed in the plaint but matter ordered to proceed for formal proof for interest. It is not clear to this court what the Deputy Registrar meant with the said order having entered judgment as prayed in the plaint.
5. This matter was therefore fixed before me for formal proof on the issue of interest when P.W.1 JULIUS GIKONYO testified on oath and produced documents including letter of guarantee, letter of offer, letter of undertaking, letter of set off, security and minutes of the executives management committee.
6. I must however point out that the 2nd and 3rd defendant having entered appearance through an advocate service of hearing notice upon them directly was irregular.
7. Interlocutory judgment having been entered against the defendant herein the only issue for the courts determination is whether the plaintiff is entitled to interest at the rate of 32% pa. In this I have before me the letter of offer wherein clause 3 in respect of interest and the charges provided for are interest rate of 18% pa on the authorized facility and a penalty rate of 32% pa for the amount in arrears.
8. As at the time when the plaintiff amended its plaint the 1st defendant was in arrears to the tune of Ksh. 5,388,245.30 and by the provisions of clause 3 of the letter of offer the plaintiff is entitled to penalty rate of 32% pa for the amount in arrears and therefore no unreasonableness in awarding the same as was stated by WAKI JA in KENINDIA ASSURANCE Co LTD v ALPHA KNITS LTD & ANOTHER CIVIL APPEAL NO. 330 OF 2001.

9. In the final analysis I now enter judgment in favour of the plaintiff against the 1st defendant in respect of interest at the rate of 32% p.a from the date of filing suit to the date of this judgment.
10. Having found that the 2nd and 3rd defendants were not properly served with the hearing notice for the formal proof I decline to make any order against them.

Dated, signed and delivered at Nyeri this 30th day of May 2014.

J. WAKIAGA

JUDGE

judgment read in open court in the absence of the parties and their advocates.

J. WAKIAGA

JUDGE

30/5/2014