



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Civil Case 73 of 2006

STROMME MICROFINANCE EAST AFRICA LTD.....PLAINTIFF

VERSUS

RELIEF & ENVIRONMENTAL CARE AFRICA.....1ST DEFENDANT

BIG MIRCO INVESTMENTS LTD.....2ND DEFENDANT

J U D G E M E N T

The Plaintiff, as a micro-finance institution and a company limited by shares under Ugandan law filed the Plaint in court on 24th February 2006 against the two Defendants. The 1st Defendant is a Non-Governmental Organization registered under the provisions of the Non-Governmental Organizations Co-ordination Act of Kenya while the 2nd Defendant is a limited liability company incorporated in Kenya. The Plaintiff claims from the Defendants a total sum of Kshs.9,984,973/= plus interests and costs. The claim is based on allegation of breach by the Defendants of loan and/or co-operation agreements dated 28th June 2002 and 2nd July 2003 between the Plaintiff on the one hand and the Defendants on the other. The Defendants entered appearance on 25th April 2006 and filed their joint Defence on 13th May 2006 in which the Defendant totally denied the claim.

The Plaintiff on 29th January 2010 filed and served upon the Defendants Notice to Produce dated 25th January 2010, and on 29th January 2010 the Plaintiff filed its List of Documents. A further Bundle of Documents by the Plaintiff was filed on 2nd February 2010 on 5th of February 2010. What is said to be “Agreed” issues was filed in court by the Plaintiff but the Defendants did not sign it. I therefore consider it as Plaintiff’s List of Issues. There is none on the part of the Defendants.

On 5th December 2011 the hearing of the matter took off with the testimony of the Plaintiff’s first witness P.W. 1 – EDWARD NKANGI who testified that he is the Plaintiff’s Chief Executive Officer and he is based in Uganda. As such Chief Executive Officer he manages the resources and assets of the company.

The witness testified that the connection between the 1st and 2nd Defendants is that the 1st Defendant registered the 2nd Defendant for the purposes of lending and receiving money on behalf of the 1st Defendant. He referred to the Memorandum of Articles and Association of the Company at page 15 of the

Plaintiff's Bundle of Documents. He testified that the first loan given out by the Plaintiff to the Defendant was Kshs.3,199,500/= or USD 40,500 on June 28th 2002. The loan was to be repaid within a period of 24 months at 4% interest p.a. on decreasing balance. Payment schedule was availed and signed by the parties. This was exhibited at page 54 of the Bundle. Quarterly interest was Kshs.79,988/= for the first one year. In the second year interest and principal was payable while only interest was payable in the first year.

The second loan was granted on 2nd July 2003 being USD 85,000 or Kshs.6,300,000/=. The terms were the same with the first loan except that interest was 10% p.a. Quarterly interest was Kshs.157,500/= for the first year. This loan was not repaid in full. Only Kshs.616,164/= was repaid leaving a balance of Kshs.6,546,754/=.

The third loan was effected on 19th May 2004 for Kshs.3,000,000/= repayable within 24 months at 12% p.a. interest. (Ref. page 66 of the Bundle). There was no repayment at all in respect of this loan.

The Plaintiff demanded the said sums but to date no payment has been tendered.

The allegations in the Defence that the Defendant's clients have defaulted is not relevant to the Plaintiff's case. The witness testified that he had adequate information on the suit matter and that he is competent to testify. The Defendants issued cheques numbers 000118 and 000199 exhibited at page 79 of the Bundle as part security but the same were dishonored when presented for payment.

The Defence Witness D.W. 1 one Mr. Peter Oluoch Odhengo testified on behalf of the Defendant. He testified that he is a founder member of the Defendant who is legally related to the 2nd Defendant in terms of their programmes and objectives. He testified that they were introduced to the Plaintiff by the Catholic Relief Services. The financial support they received from the Plaintiff was a revolving fund for lending to the community groups. He admitted signing two agreements for USD 45,000 and USD 85,000 but did not remember signing the third agreement at all. On cross-examination the witness agreed that although he does not remember signing the third agreement, the documents presented in court shows that loan number 3 for Kshs.3,000,000/= was signed and disbursed. In other words the witness agreed that loans were advanced as alleged in the Plaintiff and in the supporting documents.

He further testified that the Defendants repaid the 1st loan fully. For the second loan only Kshs.74,000/= was paid. He said that the loan received was for onward lending to community groups and that the Defendant's failure to pay was because those community groups had not repaid the money. The Defendants never benefited in the scheme. The Defendants, he said, had records of the failure of the community groups to repay the loans advanced to them by the Defendant. Loans 2 and 3 amount to Kshs.10,000,000/= and the Defendants had disbursed it to the said groups, and the projects funded by those monies were working in Ahero and Kapenguria. The witness, who said he is a lecturer at U.S.I.U., denied any involvement in misappropriating the funds or their loss.

Contrary to the denials contained in the Defence the Defendant Witness actually confirmed the elements alleged in the Plaintiff. He testified that all the three loans 1, 2 and 3 were disbursed to the Defendants. Loan 1 was fully repaid while for loan 2 only a paltry Kshs.74,000/= was repaid with loan 3 not being repaid at all. The Defendant's Defence virtually collapsed in cross-examination. At the end of the testimony of the Defendant's sole witness there was virtually no legal defence. The witness then only pleaded sympathy saying that the community groups to which they advanced the funds had failed to repay the same and that those community groups were to blame for the debts.

To the contrary, the Plaintiff has proved this case on a balance of probability. The Plaintiff has submitted evidence of the money owed to it by the Defendants. The Plaintiff produced Exhibit No. 1 which contained the details of the three agreements, the sums advanced and interests chargeable. At page 90 and 91 of the documents there were the "*Loan Status*" and "*Arrears and Payments Analysis*" as at 04.10.05. This evidence has not been challenged by the Defendants. I therefore find no difficulty entering judgement for the Plaintiff against the Defendants jointly and severally as prayed in the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 17TH DAY OF MAY 2012.

E. K. O. OGOLA

JUDGE

PRESENT:

Mutua H/B for Mwangi for the Plaintiff

N/A for the Defendant

Teresia – Court clerk