

(f) Such other and further grounds and reasons as shall be adducted at the hearing hereof.

2. In support of the application is an affidavit dated **9th May 2012** with several annexures sworn by **BRIAN ASIN** who is described as a Legal Officer of the Plaintiff Bank. The application is not opposed. Although the application was served as deponed in the affidavit of service filed in court on **4th June 2012** the Defendant has not opposed the same either by filing grounds of opposition or filing a replying affidavit or attending the court to submit in opposition thereof.

3. The brief history of the application from the pleadings is that by a loan agreement dated **28th February 2009**, the Plaintiff at the request of the **1st Defendant** is alleged to have advanced the **1st Defendant** a sum of **Kshs.3,150,000/=** on the terms *inter-a-alia* that the loan would be repaid on demand with an initial payment of **Kshs.400,000/=** to be received on or **31st March 2009** and thereafter monthly installments on or before **25th of each month** over a period of **18 months** with interest at **18% per annum** and **24% per annum** on any arrears. It is alleged that the Defendant by guarantee dated **28th February 2009** did guarantee the obligations of the **1st Defendant** under the said loan agreement and did agree to pay any monies due or owing by the **1st Defendant**. The **1st Defendant** defaulted in making any payment and upon demand the **2nd Defendant** has refused to meet his obligations under the said guarantee, hence this suit.

4. The Applicant has attached the following documents to the supporting affidavit:-

- A letter of application dated **27th February 2009** by the **1st Defendant** requesting the Plaintiff for a loan of **Kshs.3,150,000/=**.
- Application for loan form by the Plaintiff for the sum claimed.
- Loan Agreement dated **28th February 2009** between the Plaintiff and the Defendant.
- Form of acceptance for a loan of **Kshs.3,150,000/=** by the **1st Defendant** on **28th February 2009**.
- A Deed of Guarantee and Indemnity dated **28th February 2009** by the **1st Defendant**.
- A Demand Notice dated **22nd June 2009** for **Kshs.3,286,219** by the Plaintiff to the **2nd Defendant**.
- A further Demand Notice dated **12th October 2009**.
- Statement of the Debtor's account.

5. By their joint statement of defence filed in court on **6th August 2010** the Defendants have denied all the allegations in the Plaint and put the Plaintiff to the strict proof thereof. The Plaintiff has submitted that the said defence is a mere denial, a sham and an abuse of the process of this court.

6. I have considered the application in the light of all the pleadings in this matter. Firstly, in my view, the defence is a sham and a mere defence. These views are confirmed by the annexures and the affidavit in support of the application. The annexures prove the elements of the claim beyond reasonable documents. This being so, the defence is a sham, a mere denial and an abuse of the process of this court. No wonder, therefore, the Defendants have not opposed the application.

Under **Order 2 Ruel1 5 (c)** and **(d)** this court has the authority to strike out, at any time of the proceedings, a defence which discloses no reasonable defence or which may prejudice, embarrass or delay the fair trial of the suit; or a defence which is otherwise an abuse of the process of the court, all of which grounds I find to apply in the case within.

7. In the upshot I herewith strike out the Defence filed by the Defendants herein on **6th August 2010** and

enter judgment against the Defendants herein in favour of the Plaintiff as prayed in the Plaint.

The costs of this application and the suit shall be for the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 18TH DAY OF JULY 2012

E. K. O. OGOLA

JUDGE

PRESENT:

Njoki H/B for Luseno for the Plaintiff

N/A for the Defendants

Teresia – Court Clerk