



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 511 OF 2004

AKIBA BANK LIMITED PLAINTIFF

VERSUS

AMINA GHAFUR HAJI 1ST DEFENDANT
ABDUL GHAFUR HAJI 2ND DEFENDANT
ABDUL RAHIM ISMAIL (also known as
Abdul Rahim Noormohamed Ismail) 3RD DEFENDANT

JUDGMENT

1. The plaintiff's claim as pleaded in the plaint against the three defendants is that, sometimes in April 2002, the plaintiff was requested by Target Carriers Limited (in receivership and herein after referred to as the Company) to advance the company financial facilities to the tune of 35,000.000. In consideration of the said advances the 1st, 2nd and 3rd defendants guaranteed to indemnify the plaintiff in the event that the company defaulted in the payment of the loan. The company did default in the repayment of the loan and the defendants were called upon to pay the outstanding sum of Ksh.41.192,727.67/- with interest at the rate of 17% with effect from 22nd July 2004 until full payment.
2. The defendant filed a statement of defence denying liability and in particular denying having executed any guarantee to secure the company's borrowings, they also challenged this suit because the company is not a party therefore there is no connection between the plaintiff and the defendants. However when the matter came up for hearing the defendants did not attend court to give evidence in support of their defence.
3. The plaintiffs' case was presented by Tomas Kanana who works with the plaintiff as a manager from 1992. PW1 testified that ECO Bank took over the assets and liabilities of Akiba

Bank in 2007 and the name of the plaintiff changed to ECO Bank. He produced documents to show that a loan of Ksh.35,000,000 was granted to the company as per the letter of offer dated 9th April 2002. The company accepted the offer and terms and conditions of the borrowing which was secured by a debenture dated 18th April 2002. The defendants who are the directors of the company also signed a guarantee and indemnity dated 19th April 2002, and the amount was advanced to the company.

4. However the company defaulted in the repayment and despite demand for payment, the defendants failed to honor their obligations in terms of the guarantee and indemnity. The company was placed under receivership thus the plaintiff proceeded against the directors to recover the money they guaranteed to the company. The plaintiff now seeks for judgment against the defendants for the sum prayed in the plaint with costs and interest.

5. As stated earlier there was no evidence to support the defence and to controvert the evidence by the plaintiff. The evidence by the plaintiff as well as the documents produced in support of their claim clearly show that banking facilities were granted to the company for the sum of Ksh.35,000,000 according to the letter of offer. The defendant executed guarantee and indemnity forms to guarantee the company for the payment of ksh.35,000,000/-

6. As at 21st July 2004 the company had defaulted in the loan repayment and the sum claimed being Ksh.41,192,727.67 was demanded from the defendants who did not settle the outstanding amount that was demanded. On a balance of probability, I find the plaintiff proved their case against the defendants and judgment is hereby entered for the sum of KshKsh.41,192,727.67 with costs and interest at court rate

JUDGMENT READ AND SIGNED ON 26TH FEBRUARY 2010 AT NAIROBI

M.K. KOOME
JUDGE