



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 1072 of 2001

TRUST BANK LIMITED PLAINTIFF

VERSUS

ZENITH STATIONERS LIMITED DEFENDANT

RULING

1. The notice of motion dated 24th June 2009 seeks for summary judgment for the plaintiff against the defendant. It is brought under the provisions of order **XXXV rules 1(a) 2, and 3 of the Civil Procedure Rules**. It is based on the grounds that the plaintiff's claim against the defendant is liquidated. The plaintiff is truly indebtedness to the plaintiff and the defence is a sham which raises no triable issues but meant to delay the plaintiff from its just judgment. The defendant admitted or acknowledged indebtedness.
2. This application is supported by the affidavit by **Daniel Njunge Muguima** sworn on 24th June 2009. According to the plaintiff, on or about 13th May 1994 the defendant opened an account and was granted some banking arrangements called bill discounting facility or arrangement where the plaintiff would purchase post dated cheques and upcountry cheques in favor of the defendant and credit his account with an equivalent amount. On 27th November 1996, the plaintiff bought six posts dated up country cheques which were drawn by Egerton University in favor of the defendant.
3. The plaintiff credited the defendant's account with a sum of Ksh.1.885,385.35/- as per the attached certified copies of the accounts. The defendant continued to over draw the account, and on 10th March 1997 the defendant admitted being in debited to the plaintiff and proposed to settle the outstanding amount on or before 30th June 1997. The defendant failed to honor the proposal and the debt continued to accrue interest. Despite demand there was no payment and as at the time the plaintiff filed this suit the sum outstanding was Ksh.4.802.100.85/- which the plaintiff is claiming with interest at the rate of 25% per annum from 1st June 2001 until full payment.
4. This application was not opposed by the respondent who was duly served. This application is brought under order **XXXV of the Civil Procedure Rules**. As I understand those provisions, a plaintiff with a

liquidated claim to which there is clearly no defence can obtain a quick summary judgment without being unnecessary kept from what is due to it by way of delaying tactics by the defendant. However if there are reasonable grounds raised in the defence raising triable issues the plaintiff is not entitled to summary judgment.

5. The primary consideration in this application is whether the defence raises triable issues. The issues raised in the application and the supporting affidavit are not all controverted. The plaintiff has annexed documents in support of the claim. One of the documents is a letter written by the defendant dated 10th March 1997 which clearly admits liability in the following terms:

“We refer to the above matter and wish to advise that the balance outstanding of Ksh.1,704,454.10 in your books will be settled in full any time before 30th June 1997. Kindly bear with us. . .

Yours faithfully

***Manish Shah
Managing Director”***

6. With this admission of liability the plaintiff is entitled to summary Judgment for the sum claimed with interest at court rates and costs.

RULING READ AND SINGED on 19TH FEBRUARY 2010 AT NAIROBI

**M.K. KOOME
JUDGE**