



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS) Civil Case 606 of 2008
APA INSURANCE LIMITED PLAINTIFF**

VERSUS

CITY HOPPER LIMITED 1ST DEFENDANT

**GEORGE THUO 2ND DEFENANT
JUDY THUO 3RD DEFENDANT**

RULING

1. The plaintiff instituted this suit against the defendants seeking to recover a sum of Ksh.3.751,824.00/- with interest at the rate 25% from the date of default as well as costs of the suit. Subsequently, the plaintiff amended the suit because it is contended the defendant made a part payment of Ksh.700,000/- on 21st October

2008 after the suit had been filed. Thus the claim in the amended plaint is Ksh.3,051,824/- with interest at court rates. This claim by the plaintiff is in respect of personal guarantees executed by the 2nd and the 3rd defendant to secure the debts by the 1st defendant. Despite the guarantee and the undertaking by the 2nd and 3rd defendants they failed to settle outstanding debts which were guaranteed to the 1st defendant.

2. The plaintiff filed the present suit and now seeks summary judgment by the notice of motion dated 19th March 2009. The plaintiff seeks for summary judgment for the sum of Ksh.3,051,824/- with interest as prayed for in the plaint, in the alternative judgment be entered on admission of Ksh.516,166 in favor of the plaintiff. This is on the grounds that the defendants have no reasonable defence to the plaintiff's claim. The defence is scandalous, frivolous and vexatious. It is evasive and consists of mere denials. This application is supported by the affidavit of **Caroline Njeri** sworn on 19th March 2009. This affidavit has given a chronology of how the plaintiff insured the 1st defendant motor vehicles.

3. The premiums were supposed to be paid on a monthly basis but the 1st defendant defaulted to make the payments and made numerous proposals that are attached to the affidavit. On 7th February 2008, the 2nd and 3rd defendants executed a personal guarantee and indemnity to indemnify the plaintiff in the event of any default by the 1st defendant. The defendants failed to pay the sum guaranteed that is when this suit was filed on 16th October 2008. On 21st October 2008, the defendant forwarded a cheque on Ksh.700, 000/- towards the settlement of the outstanding premiums. The defendants also upon being served with the summons and plaint in this matter, filed a defence and admitted owing a balance of Ksh.516,166/- but they denied they owned the sum claimed. It is for those reasons the plaintiff contends that there is no defence capable of going to trial.

4. This application was opposed; the respondent relied on the affidavit of **Githaiga Weru** sworn on 22nd June 2009. The respondents contended that the defence erroneously admitted a balance of Ksh.516,166. The defendants are disputing the claim which should go on a full trial. The personal guarantee was allegedly for a sum of over Ksh. 9,000,000/= while this claim is for a claim much less than what was guaranteed. It was further contended some of the premiums were returned to the plaintiff. In the circumstance the defence raises triable issues which should proceed for trial.

5. This application is brought under the provisions of order **V1 Rule 13 and Order XXXIV Rule 1** of the Civil Procedure Rules. These rules basically provide that a plaintiff with a liquidated claim to which there is clearly no defence can obtain a quick summary judgment without being unnecessarily kept from what is due to it by way of delaying tactics by the defendants. The principle element for consideration in this application is whether the plaintiff's case is clear and plain; that the defendants are truly and justly indebted to the plaintiff. The other issue to consider is whether the defence raises triable issue(s) which should entitle the defendant to defend it at the trial. This can be demonstrated by the statement of defence which must disclose triable issue(s) or a replying affidavit which must show the defence discloses triable issues.

6. The applicant has attached a personal guarantee and indemnity that was signed by the 2nd and 3rd defendants to guarantee the payment to the plaintiff. The premiums which were owing in respect of the

insurance cover for the motor vehicles belonging to the 1st defendant. When the suit was filed, the defendants filed a defence on 18th November 2008 and also a defence to the amended plaint and paragraphs 5, 6 and 7 in both pleadings admit that the defendants owe a balance of Ksh.516,166. They however denied the sum claimed. The defendants main defence is that they returned premiums amounting to Ksh.2.535,658/- which the plaintiff should have indemnified the defendants. However in the defence and the replying affidavit, the defendants have not shown which claims were repudiated and returned amounting to the said sum.

7. On the other hand the plaintiff has clearly explained and demonstrated a copy of the guarantee and indemnity. They also annexed copies of letters written by the 3rd defendant admitting liability and provided a payment schedule. A further letter of 21st October 2008 enclosed a cheque of Ksh.700,000/- and apologized for the delay in forwarding the payment of the outstanding premiums according to the schedule. In my humble view the plaintiff's case is clear, straight forward and is liquidated. The defence and the replying affidavits do not disclose triable issues. Accordingly I find the plaintiff is entitled to summary judgment for the sum of Ksh. 3,051,824/- as prayed in the plaint with interest at court rates and costs of the suit.

RULING READ AND SIGNED ON 9TH JULY 2010 AT NAIROBI.

M.K. KOOME
JUDGE