



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Suit 164 of 2008

AHMED A. SUMRA 1ST PLAINTIFF

SUMRA ENGINEERING WORKS 2ND PLAINTIFF

VERSUS

SOUTHERN CREDIT BANKING CORPORATION LTD DEFENDANT

RULING

Before me is a Notice of Motion dated 31st July 2008 in which the Applicant seeks inter alia orders that:-

“Summary judgement be entered herein against the defendant in favour of the 1st plaintiff for the sum of Kshs.1,500,000/- together with interest thereon as prayed in the plaint”.

The application was opposed by the Respondent. It is trite law that summary judgement should only be entered by a court in cases where the court is of the opinion that there are no triable issues. Summary judgement is indeed an extreme ruling as in effect it disposes of the case without hearing from the Defendant. I am guided in this respect by the case of **Lacote Limited –vs- Henry Oulo Ndede [2005]** ekLR at page 2 where the Court of Appeal held that:-

“Summary procedure is a radical remedy and a court of law should be slow in resorting to the procedure which can only be applicable in plain, clear and obvious cases”.

I have had a look at the defence filed on 28th July 2008 and in my opinion it does raise triable issues. I am reluctant at this stage to shut the doors of justice against the Defendants as they have a right to present their defence before a competent court for evaluation. I do not consider this case to be ***“plain, clear and obvious”*** as per the **Lacote** decision. For the above reasons I hereby dismiss this present application in its entirety and order that the matter proceed to full hearing. Costs in the cause.

Dated and delivered at Mombasa this 30th day of July 2009.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Ochwa for Defendant/Respondent

Mr. Odera for Plaintiff

M. ODERO

JUDGE

30/7/2009