

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL CASE 366 OF 2006

CONSOLIDATED BANK OF KENYA LTD.....PLAINTIFF

VERSUS

TRIEPEC BUILDERS LIMITED.....1ST DEFENDANT

DAVIES N K KIBAKI.....2ND DEFENDANT

KURIA MUCHOHI GIKONYO.....3RD DEFENDANT

ROBINSON MWANGI KARIGUH.....4TH DEFENDANT

RULING

The plaintiff by a Notice of Motion dated 4th of September 2006 seeks an order for summary judgment to be entered against the defendants. In the alternative the plaintiffs' prays that the defendant defence filed on the 11th August 2006 be struck out for failure to disclose reasonable cause. When this matter came up for hearing on the 23rd of January 2007 the defendant counsels who had been served failed to attend court. The matter did proceed for hearing. The application is supported by the affidavit of the Plaintiffs Manager at the Koinange Street in Nairobi branch. He deponed that the defendants are justly and truly indebted jointly and severally to the plaintiff for the amount claimed in the Plaintiff. That the defence filed on behalf of the defendants consists of denials only. Annexed to that affidavit was a letter of offer made to the 1st Defendant for a temporary overdraft facility of kshs 8 million. That offer was accepted by the 1st Defendant. Also annexed to that affidavit are copies of guarantee and indemnity signed by the 2nd to the 4th Defendants. The 2nd to the 4th Defendants by those guarantees undertook and guaranteed to pay to the Plaintiff the debt owed by the 1st Defendant for a maximum kshs 8 million. The Plaintiffs Branch Manager prayed that judgment be entered for the plaintiff as prayed.

As stated herein before the defendants were not represented and therefore the court did not have the benefit of their arguments. Going through the annexures to the affidavit in support I found that the plaintiff had annexed Bank statements running from the year 2005 to 2006. However I found that those statements failed to state to whom they belong and to which account they are related to. Indeed it is not until August 2005 that one notices at the bottom that the name of the 1st Defendant is reflected as the account holder. Bearing in mind the amount claimed in the plaintiff which is kshs 2,585,260.65 which was owing as at 31st of May 2006 the Statements annexed to the application do not reflect that amount. Indeed I could not find that figure of kshs 2,585,260 which it is pleaded in the plaintiff was owing as at 31st May 2006 in all the statements that the plaintiffs relies upon. For that reason alone I find that the plaintiffs application will fail. But perhaps much more than that the plaintiffs Notice of Motion fails to comply with Order L Rule 3 of the Civil Procedure Rules which requires that every Notice of Motion should state in general terms the grounds of the application. The plaintiffs application does not show any ground upon which it is based upon. Therefore additionally for failing to so state the plaintiffs application does fail. The application therefore by Notice of Motion dated 4th of August 2006 is hereby

dismissed with no orders as to costs.

MARY KASANGO

JUDGE

Dated and delivered this 15th day of February 2007.

MARY KASANGO

JUDGE