



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CIVIL CASE 31 OF 1996**  
**NATIONAL BANK OF KENYA.....PLAINTIFF**  
**VERSUS**  
**LINAH CHEBET KIPSEI:.....DEFENDANT**

**RULING**

Before me is an application under Order XXXV rule 1 (1) (a) and (2) CPR seeking the defendants defence dated 30<sup>th</sup> may 1996 to be struck out and summary judgment to be entered against the defendant for Shs.2,056,072/65 plus interest and costs.

By a plaint filed on 27<sup>th</sup> February 1996 the plaintiff Bank sought judgment against the defendant LINA JEBET KIPSEI for Shs.2,056,072/65 with interest being the amount which the defendant had accumulated as an overdraft as of 18<sup>th</sup> January 1995. He also sought interest and a penalty of 32%, on the principle amount. the defendant for a long time did not file defence. Eventually defence was filed on 12<sup>th</sup> June 1996 in which the defendants denied the claim. It is this judgment the applicant seeks to be struck out and judgment to be entered.

The defendant was served with the present application. However she did not file any replying affidavits or grounds of opposition. Application was therefore heard exparte.

The application is supported by an affidavit sworn by one **G.O. OJIAMBO** the plaintiffs branch manager Eldoret. He deponed that the defendant was in 1993 overdrew on her account No. 401-030-784 held at Eldoret Branch to the tune of Shs.1,200,000/= to transact in maize business. This is the money which after attracting interest rose to Shs.2,056.072/65. On 18<sup>th</sup> January 1995 the defendant wrote to the plaintiff a letter admitting that she owed the money and giving a proposal on how to pay the amount.

However by the time the suit was filed the money had not been repaid.

As stated earlier the defendant made no reply to the application. In essence it was unopposed. Order 35 rule 1 (a) CPR provides;

“ (1) In all suits where the plaintiff seeks judgment for;-

(a) a liquidated demand with interest or

(b).....

**where the defendant has appeared the plaintiff may apply for judgment for the amount claimed, or part thereof and interest.....”**

The claim against the plaintiff is a liquidated one. the plaintiff has stated in his grounds that the defence filed was a mere denial and therefore a show and that the defendant had admitted the claim in her letter to the plaintiff. I have considered the application and the defence and final the application is merited. The plaintiff had clearly stated in the plaint that the defendant had withdrawn her account with the sum of Shs.1,200,000.=. The defendant in defence denied holding any account with the plaintiff but in her letter exh. ‘G.001’ dated 18<sup>th</sup> January she candidly admits holding account No. 401-030-784 and overdrawn her account with Shs.1,200,000/= to buy maize in Uganda. She explained why she could not be able to repay the amount and acknowledged that with the interest accrued her indebtedness to the plaintiff was Sh.2,052,072/65. This money she has not paid. Having admitted the amount I find that there is really no triable issues. As stated the defence is a mere denial and the plaintiff having shown that the defendant indeed owed it the amount claimed there is no issue to go for trial.

In the circumstances the application is allowed. The defence filed herein is struck out and judgment entered in favour of the plaintiff against the defendant for the sum of Shs.2,052,072/65 with interest at 32% from 18<sup>th</sup> January 1995 to the date of filing the suit from which date the interest will be at courts rate. The defendant will also pay costs of the suit.

Dated and delivered at Eldoret this 4<sup>th</sup> day of April, 2007

**KABURU BAUNI**

**JUDGE**

**DELIVERED IN THE PRESENCE OF:**

C/C - David

.....for applicant

.....for Respondent