



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
Civil Case 112 Of 2004**

**NATIONAL BANK OF KENYA LIMITED .....PLAINTIFF**

**VERSUS**

**ELIZABETH W. KIMEMIA .....DEFENDANT**

**JUDGEMENT**

At the hearing of this case on the 7.2.2006 the Plaintiff called its evidence and closed its case. Mr. Githenji for the Defendant thereafter applied for an adjournment as the Defendant was not present although he had written to her to attend. The matter was adjourned to the 27.2.2006 at which time only the Plaintiff appeared and asked for a judgement date.

I have only therefore, the evidence of the Plaintiff in this case.

It is the Plaintiff's case that the Defendant was a director of the company called Njabini Beer Distributors Limited which was given banking facilities in the form of an overdraft for Kshs.2 million and a guarantee facility of Kshs.3 million.

The security for the facility was set out in a letter addressed to the Directors of the Company of the 17.4.1997 and included the joint and several guarantees of the directors for Kshs.5 million supported by a legal charge for Kshs.2 million over a property known as Nyandarua/Ol Bollosat/2 valued at Kshs.4.5 million.

Additionally, a guarantee for 4 million from South Kinangop Holdings Limited supported by a charge over L.R. NO.11927/13 valued at Kshs.5 million.

The charges were duly drawn and registered and two guarantees were drawn to secure the said facilities, the first signed by Josiah Munyua Kimemia, the Defendant's husband and the Defendant and the other signed by the Defendant alone. Both were dated the 14.4.97 and duly witnessed and were for the sum of Kshs.5 million. The Defendant's husband died before the suit was filed.

All of these documents were produced and are included in Exhibit 1 together with other documents to which I will refer.

By two letters of the 25.9.1997 and 14.10.1997 the Defendant's husband wrote to the Plaintiff offering further securities and stating that he was selling one of their properties.

On the 25.10.1997 the Plaintiff wrote to the Company headed "Re outstanding debt of Kshs.12,231,527.40." asking for the indebtedness to be reduced to Kshs.2 million the overdraft level.

On the 7.5.98 Rachuonyo & Rachuonyo for the Plaintiff wrote to the Defendant and her husband

informing them that the Company had defaulted in payment of Kshs.12,918,382.90 informing them that the property at Nyandarua would be sold and they were liable to pay the sum due. Proceedings were threatened after 30 days. The property charged were sold one fetching Kshs.3,750,000/= and the other Kshs.2 million. These amounts were credited to the Company's account. Despite this due to interest and other charges the account was substantially in arrear as at 31.1.2002 in the sum of Kshs.33,953,240.00.

This suit was filed on 27.2.2004 against the Defendant for Kshs.5 million together with interest at 28% from 7.1.1998 until payment in full.

The Defence filed alleged the guarantee was for Kshs.3 million and not 5 million and that the increase of the indebtedness to Kshs.12,918,382.90 was due to the Plaintiff's negligence and that the amounts secured by the charges were sufficient to repay the debts.

Agreed issues were filed dated the 2<sup>nd</sup> December 2004 as follows:-

1. **Did the defendant issue any valid guarantee to the plaintiff? If so, what was the principal sum?**
2. **Has the said guarantee been satisfied?**
3. **What amount, if any, is due from Njabini Beer Distributors Limited (the Principal Debtor), to the plaintiff?**
4. **Were the securities already sold enough to repay the principle sum and accrued interest?**
5. **Is the defendant liable to settle any portion of the sum due from the Principal Debtor to the plaintiff under the guarantee? If so, what is the defendant's liability?**
6. **Was the plaintiff negligent in letting the debt increase to Kshs.12,918,382.90?**
7. **Is this suit competently in court?**
8. **Who is liable for the costs of the suit?**

I find that on the evidence the answer to these issues is;

1. Yes – Kshs.5 million
2. No
3. Kshs.33,953,240.00 plus further interest
4. No
5. Yes to the extent of her guarantee of Kshs.5 million plus interest thereon
6. No. There is no evidence of any negligence nor were any particulars given or proved
7. Yes
8. The Defendant

The guarantee executed by the Defendant stated that the total amount recoverable thereon shall not exceed Kshs.5 million together with interest calculated at the ruling rate from time to time for Bank advances in Kenya. No evidence was given of these rates.

I therefore, give judgement against the Defendant for Kshs.5 million plus interest at court rates thereon

from the date of filing the Plaint until payment in full plus the costs of the suit.

Dated and delivered at Nairobi this 4<sup>th</sup> day of April 2006.

**P. J. RANSLEY**

JUDGE