



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 516 of 2003

ALPHA KNITS LTD.PLAINTIFF

VERSUS

MEGHJI KANJI & CO. ADVOCATESDEFENDANT

JUDGEMENT

In this case the Plaintiff claims Kshs.10,000,000/= from the Defendant which is alleged was paid to the Defendant by a cheque on or about the 2nd October 1997 by way of a loan. The Plaintiff claims interest on this sum from the 2.10.1997 at commercial bank rates plus a further 4% thereon.

The Defendant in its Defence denied liability in respect of the sum claimed and denied that there was any agreement, which the Plaintiff alleged, between the Plaintiff and itself. The claim for interest was also denied.

In evidence the Defendant's witness produced a letter of the 13th October 2001 written by the Plaintiff to BTB Insurance Agencies a sister company to the Defendant. It was the witness' evidence that Mr. M D Shah of the Plaintiff company handed the said cheque to him as payment for insurance premiums for RTB Insurance Agencies and Bird Insurance Agencies both of which are companies carrying on business as Insurance Brokers. The said letter was asking for details of a statement sent by BTB Insurance Agencies to the Plaintiff. In it the writer asks that BTB Insurance Agencies checks its records in regard to inter alia a cheque for Kshs.10 million of the 2.10.1997 and paid on the 3.10.1997.

The writer was Mr. M. D. Shah who handed the cheque to the Defendant's witness.

This fact, however, was not pleaded in the Defence.

The point for determination is whether the cheque was a loan to the Defendant as pleaded in the Plaintiff or payment for insurance services as stated by the Defendant's witness.

The witness called by the Plaintiff was a brother of Mr. M. G. Shah and no explanation was given by the witness as to why his brother was not called. The witness, however, denied the cheque was paid for an insurance premium.

Having heard the witnesses, I preferred the evidence of the Plaintiff's witness.

In my view, on a balance of probabilities, I find that the cheque for Kshs.10 million was an unsecured loan from the Plaintiff to the Defendant. If the cheque had been for an insurance premium it would have been drawn in favour of BTB Insurance Agency of bid insurance Agencies and not the Defendant. There is evidence that the Defendant was in some financial problems and I accept that the loan was to assist the Defendant in its finances.

There was, however, neither any agreement in writing for the loan nor was any interest agreed to be paid thereon. It was what is colloquially called a friendly loan.

In the result, I give judgement for the Plaintiff for Kshs.10 million with interest thereon at court rates from the date of filing of the Plaint. The Plaintiff will have the costs.

Dated and delivered at Nairobi this 25th day of May, 2006.

P. J. RANSLEY

JUDGE