



REPUBLIC OF KENYA

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

**Civil Case 977 of 1999**

**GIRO COMMERCIAL BANK LIMITED.....PLAINTIFF**

**VERSUS**

**SHREEJI ENTERPRISES (K) LIMITED .....1<sup>ST</sup> DEFENDANT**

**GNANJIVAN SCREWS & FASTENERS LTD.....2<sup>ND</sup> DEFENDANT**

**ANDREW DOUGLAS GREGORY .....3<sup>RD</sup> DEFENDANT**

**ABDUL ZAHIR SHEIKH .....4<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

The Plaintiff formerly Giro Bank Limited by virtue of a Deed of Assignment dated the 10.12.98 became the beneficiary of all of the assets of a Bank called Commercial Bank Limited (C.B.L.).

Amongst the assets transferred were a series of Promissory Notices drawn by the 1<sup>st</sup> Defendant in favour of the 2<sup>nd</sup> Defendant for value received. The sum total of the bills is Kshs.3 million.

The Promissory Notes were discounted by C. B. L. which wrote to the 1<sup>st</sup> Defendant on the 31.7.1998 asking for payment within 21 days of Kshs.2 million in respect of four bills for Kshs.500,000/= each and asking that the further bills totaling Kshs.2 million in all were paid on due date. It also claimed accrued interest at 48%.

The 1<sup>st</sup> Defendant in its Amended Defence denied acceptance or payment of the bills and averred that the same could not have happened since there was no supply of goods as intended for the Bills. It disputed interest at 48%.

In evidence a director of the Defendant DW1 stated that the Bills were issued in respect of goods to be delivered to them in the sum of Kshs.2,756,000/= which they however, paid for in cash to the 2<sup>nd</sup> Defendant. He denied any knowledge that the Bills were discounted to C.B.L. and contended he was a stranger to any transaction between the 2<sup>nd</sup> Defendant and the Plaintiff.

In submissions the 1<sup>st</sup> Defendant relied on the case of **Lick Barrow & another v. Mason & Others [1775-1802] ALL ER.** Ashhust CJ stated:-

“We may lay it down as a broad general principle that whenever one of the two innocent persons must

suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.”

It was the 1<sup>st</sup> Defendant’s submission that the loss occasioned to the Plaintiff was occasioned by its own actions.

In reply the Plaintiff relied in the case of **African Overseas Trading Co. v Bhagwanji Harjiwan (1960) E.A. 417** where it was held:-

**“in view of the terms of Section 52(3) and Section 90 (2) of the Bills of Exchange Ordinance it was not necessary for notice of dishonour of the promissory note to be given.”**

In this case the 1<sup>st</sup> Defendant did not get back the promissory notes it had given to the 2<sup>nd</sup> Defendant. A Promissory Note is like a financial time bomb in that the maker remains liable on it until such time as he receives back the promissory notes and cancels the same.

The Plaintiff claims interest at 48% as this was the rate charged on the 2<sup>nd</sup> Defendant’s bill discounting facility with the Plaintiff. Although the Plaintiff in its submissions says the 2<sup>nd</sup> Defendant did not dispute this rate, the 1<sup>st</sup> Defendant did so in paragraph 5A of its Amended Defence.

The 1<sup>st</sup> Defendant did not indemnify the Plaintiff nor has it been alleged that it did so in respect of monies due from the 2<sup>nd</sup> Defendant.

There is no contractual nor statutory obligation on the 1<sup>st</sup> Defendant to pay interest and I, therefore, give judgement for the sum of Kshs.3 million with interest thereon at court rates from the date of the filing of the Plaintiff and the costs of the suit.

Dated and delivered at Nairobi this 25<sup>th</sup> day of May, 2006.

P. J. RANSLEY

JUDGE