

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

Civil Case 537 of 2005

SUPPLIES AND SERVICES LIMITEDPLAINTIFF

VERSUS

KOMOTHAI COFFEE GROWERS CO OPERATIVE SOCIETIES LIMITEDDEFENDANT

RULING.

The plaintiff by a Notice of Motion dated 22nd August 2006 brought under order XII Rule 6 of the Civil Procedure Rules seeks judgment to be entered in favor of the plaintiff in terms of the further amended plaint. The application is supported by an affidavit of the plaintiffs General Manager. The deponent stated in the affidavit that prior to the institution of this suit and even after its institution the defendant has admitted its indebtedness to the plaintiff as pleaded in the plaint. Annexed to the affidavit in support to the application are various correspondence between the plaintiff and the defendant and it is clear that the sum total of those correspondence is that the defendant does not deny the plaintiffs claim. The defendant has also issued payments to the plaintiff and those payments were enumerated in the supporting affidavit. The further amended plaint seeks for judgment against the defendant for KShs2,151,000 together with interest from the date of filing suit to payment in full. That plaint further seeks judgment for US D 19,871.40 together with interest from date of filing suit to payment in full. Finally the plaintiff seeks judgment for DM 51,040.80 again with interest from the date of filing suit until payment in full. Counsel for the plaintiff in support of the application relied on the case in ***Civil Appeal NO. 271 of 1996 Agricultural Finance Corporation and Kenya National Assurance Company Limited***. This case was in support of the plaintiffs argument that where there is admission judgment should be entered. The plaintiff also relied on the case ***Civil Appeal No. 4 of 1999 Heco Uberseehandel and Mac's Pharmaceutical Limited*** and in particular the following passage,

“It must be clear to anyone looking at all these grounds that they are predicated on the principle of law to the effect that where judgment is given in a foreign currency, that is, a currency other than the Kenya Shilling, the rate of conversion must be the rate applicable at the time of payment or enforcement. This court accepted and applied that principle in the case of *BELUF ESTABLISHMENT V THE ATTORNEY GENERAL, CIVIL APPEAL NO. 134 OF 1986 (Unreported)*”

The plaintiff sought that this court would be guided by the principle of that case and would allow conversion of the foreign currency at the time of payment.

Having considered the application the affidavit in support and the annexures therefore I do find that this is a fit and proper case for judgment to be entered on admission. The defendant even though they were served did not oppose the application for judgment. The court therefore grants orders in the following terms.

- 1) Judgment be and is hereby entered in favour of the plaintiff against the defendant in terms of the further amended plaint amended on the 20th July 2006.**
- 2) That conversion of the foreign currency in the plaintiffs claim shall be as at the time of payment.**

3) The plaintiff is granted costs of the suit and costs of the Notice of Motion dated 22nd August 2006.

Dated and delivered this 17th day November 2006.

MARY KASANGO

JUDGE