



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

CIVIL CASE NO. 732 OF 2003

**BARCLAYS BANK OF KENYA LIMITED ..... PLAINTIFF**

**VERSUS**

**EUROKEN AUTOMOBILES LIMITED .....DEFENDANT**

**RULING**

This is an application for summary judgment under Order XXXV Rule 1 of the Civil Procedure Rules. The application is also expressed to be brought under Order L Rule 3. The reasons for the application are as follows:-

- 1. That the Plaintiff extended an overdraft facility to the Defendant pursuant to an agreement.***
- 2. That the Defendant has failed to service the said facility satisfactorily***
- 3. That the Defendant by its own admission is truly indebted to the Plaintiff in the sum claimed.***
- 4. That the Defendant has no valid or bona fide defence and the defence filed is a mere sham that does not raise any triable issues.***
- 5. That the grant of this application will save on time and costs.***

The application is supported by an affidavit sworn on 19th March 2004 by one Carol Wakonyo Ngalu a Corporate Recoveries Officer in the Debt Collection Unit of the Plaintiff and is fully conversant with the facts of the case. A replying Affidavit in response to the application was sworn by one Charles M. Karigithu the Managing Director of the Defendant on 11th May, 2004.

The application came before me for hearing on 31st January, 2005. Mr. Ohaga Learned Counsel represented the Plaintiff/Applicants. There was no representation for the Defendant despite its Advocates having been served with a hearing notice. The application therefore proceeded ex-parte.

Mr. Ohaga Counsel for the Plaintiff/Applicant in support of the application took me through the application and the supporting affidavit aforesaid. He emphasized that the Defendant's written statement of defence is a bare denial and does not raise a single triable issue. The only challenge made by the Defendant is on the interest charged which on the basis of the documents exhibited is contractual. In any event the documents showed that the Defendant had admitted liability to the Plaintiff and his previous

proposal to settle its indebtedness with the Plaintiff had not been fulfilled. In the light of the Defendant's clear admission of liability, the issue of account raised in the replying affidavit is not a triable issue.

In the premises Counsel urged me to allow the application.

Having perused the documents filed herein including the Plaintiff, the defence, the Notice of Motion, the affidavits and the annexures and having carefully listened to submissions made on behalf of the Plaintiff, I am satisfied that the Defendant is truly and justly indebted to the Plaintiff in the sum claimed. I find that the Defendant's written statement of defence is a bare denial and a sham. It raises no triable issues. In the result the application is allowed, the defence is struck out and Judgment is entered in favour of the Plaintiff against the Defendant as prayed in the Plaintiff.

The Defendant will bear the Plaintiff's costs of the application.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2005.**

**F. AZANGALALA**

**JUDGE**