



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION – MILIMANI
CIVIL CASE NO. 149 OF 2002

STEPHEN NDICHU PLAINTIFF

VERSUS

MONTY'S WINES AND SPIRITS LTD..... DEFENDANT

JUDGMENT

These three suits have been consolidated.

Stephen Ndichu instituted HCCC No.149 of 2002. He becomes the 1st Plaintiff in this consolidated suit. Lawrence Centura instituted HCCC No.170 of 2002. He is the 2nd Plaintiff. Jackpot Enterprises Limited instituted HCCC No.171 of 2002. It is the 3rd Plaintiff. All the suits were instituted against Monty's Wines & Spirits Limited.

The 1st Plaintiff claims against the Defendant recovery of Kshs 373,749.70 in respect of a written agreement dated 12th May 2000 whereby the Plaintiff lent and assigned to the Defendant the said sum which sum was to be repaid by 24 monthly instalments w.e.f. 1.6.2000 in default of which the said sum would attract interest at the rate of 3% above the base lending rate per annum.

The 2nd Plaintiff claims against the Defendant recovery of Kshs 1,042,387.10 in respect of a similar agreement on the same terms.

The third Plaintiff's claim against the Defendant is for recovery of the sum of Kshs 3,986,074.18 due and payable by the defendant to the Plaintiff in respect of a similar agreement and on the same terms.

The Defendant denied the claims and filed similar defences against the three claims.

When the trial of this suit commenced before me on 8th March 2005 neither Counsel for the Defendant nor its representative attended. The hearing therefore proceeded ex-parte. The 1st Plaintiff testified for himself and the rest of the Plaintiffs. In support of the claims he testified that he was a director of the third plaintiff and so was the 2nd Plaintiff. The 3rd Plaintiff had Trust Bank Ltd Westlands Branch as its bank. The 1st Plaintiff also had a deposit at the same bank and so had the 2nd Plaintiff.

The Plaintiffs started Mayfair Casino and used to be supplied beverages by the Defendant. The 1st, 2nd and 3rd Plaintiffs by written agreements dated 12th May 2000 lent to the Defendant the sums claimed in the Plaints. Clause 3(a) of the loan Agreements provided that the loan amounts would be paid by 24 equal monthly instalments w.e.f. 1st June 2000 and thereafter each succeeding month until payment in full and clause 3(c) of the Loan Agreements provided that in the event of Default of any one or more installment payments the sums lent would attract interest at the rate of 3% above the base lending rate per annum.

The Defendant under the Loan Agreement at clause 4 also covenanted that in default of payment of any instalment the entire sum then due and owing plus interest would become immediately payable and the Lender would be at liberty to institute proceedings for the recovery thereof.

The 1st Plaintiff further testified that the Loan Agreements were all executed by all the parties. The Defendant however made no single payment and demands for payment were made which elicited no response hence this suit.

The 1st Plaintiff produced the Loan Agreement as P.Ex.(A)(B) and (C), Deeds of Assignment as P.Ex.2(A)(B)(C) Letters of demand as P.Ex.3(A)(B)(C) and the Defendant's letter addressed to Trust Bank as P.Ex.4.

Responding to the defences filed the 1st Plaintiff testified that the Loan Agreements were valid and the Defendant had acted within its powers to borrow the sums claimed from the Plaintiffs. The first Plaintiff told the Court that the filed defences were not answers or adequate answers to the claims of the Plaintiffs. The 1st Plaintiff urged me to enter judgment as prayed in the Plaint.

Having carefully considered this matter I am satisfied that the evidence tendered by the Plaintiffs in these three consolidated suits and particularly the documentary evidence produced in support of the Plaintiffs' claims conclusively establish that the Plaintiffs lent to the Defendant the sums claimed and that the purported defence that has been put forward has no merit.

The Loan Agreements remain uncontroverted. The rate of interest claimed is also contractual. In the result judgment is entered in favour of each of the Plaintiffs against the Defendant as prayed with costs.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL 2005.

F. AZANGALALA

JUDGE

Read in the presence of:-