

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO.1498 OF 1991

LEONARD MUTUAPLAINTIFF

VERSUS

KENWOOD TRADING CO. LTD.....DEFENDANT

JUDGMENT

This claim arises out of 3 cheques No. B078281, No. B078282 and No. B078283 for the sum of Shs.2,500,000/= drawn on the Kenya Commercial Bank, Industrial Area Nairobi in favour of the plaintiff which cheques when presented to the bank, were dishonoured. The plaintiff filed this suit against the defendant to recover the amount.

The defendant was served but he never appeared to defend the suit. The hearing proceeded ex parte under Order IXB Rule 3 of the Civil Procedure Rules.

The plaintiff in his evidence told the court that he is a businessman dealing with furniture, bicycles and electronics. His business is located at Gikomba in Nairobi. The defendant was his regular customer and he used to supply it with furniture, bicycles and electronics. The purchasing used to be done by one of the directors known as SURESH KANDARIA. The defendant used to make payment by cheques. He had no problems with the defendant in respect of payments as all the cheques that it issued went through. On the 27th September 1990 the defendant was supplied with goods worth Shs.1 million and paid by cheque drawn in favour of the plaintiff. It was cheque No. B078281. On 5th October 1990 the defendant was again supplied with goods worth Shs.1 million and made payment by cheque No. B078281 and on 15th October 1990 the defendant was again supplied with goods worth Shs.500,000/= and paid by cheque No. B078281. When the plaintiff presented the said cheques to the bank for payment, they were dishonoured on the ground that the defendant had exceeded the arrangement. There were no sufficient funds in the account. The arrangement was that he was issued with post-dated cheques which he could present to the bank on their due dates.

Mr. Mutiso counsel for the plaintiff submitted that there was no evidence to contradict or controvert the plaintiff's evidence. Under the Bills of Exchange Act Cap 27 Laws of Kenya a cheque is proof of debt and the burden lies on the drawer of the cheque to show that there was no consideration for the cheque. In view of failure by the defendant to tender that evidence then the cheque must be taken to be proof of the defendant's indebtedness to the plaintiff.

The plaintiff has proved his case and therefore I enter judgment in his favour as prayed in the plaint for Shs.2,500,000/= with costs and interest.

Dated and delivered at Nairobi this 19th day of April 2005.

J.L.A. OSIEMO JUDGE