



Civil Practice and Procedure

- Summary judgment application under order 35 Rules 1 and 5

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NO. 829 OF 2002

TRITON PETROLEUM LIMITED
PLAINTIFF

VERSUS

SEKTA AGENCIES LIMITED1ST
DEFENDANT

RUKAS GIKANDI2ND
DEFENDANT

DAVID KARANJA3RD
DEFENDANT

R U L I N G

The plaintiff has moved this court by Notice of Motion brought under Order 12 rule 6 and Order 35 Rules 1 and 5 of the Civil Procedure Rules.

The plaintiff seeks summary judgment to be entered against the defendants as prayed in the plaint.

The application is based on the grounds that: -

- **The defendants' defence is a bare denial and raises no triable issues;**
- **The defendants are justly and truly indebted to the plaintiff for goods supplied and services rendered;**
- **The defendants defence is merely calculated to delay justice in this case;**
- **The 1st defendant has admitted the plaintiff's claim**

The plaintiff deals in importation and distribution of petroleum products. At the 1st defendant's request the plaintiff supplied the 1st defendant with petroleum products on credit for the value of kshs 622, 000/-.

The 2nd and 3rd defendants by a guarantee dated 9th October 2001 guaranteed the 1st defendant's

indebtedness to the plaintiff.

I confirm having noted annexed to the supporting affidavit credit application form, local purchase order, delivery note, invoices and statement showing that the petroleum products were supplied to the 1st defendant for kshs 622, 000/-. I have also noted annexed to that affidavit the 1st defendant's admission of the debt and therein proposing to pay that debt at an interest of 23% per annum.

I have perused the defendant's defences and I am of the view that there is no real prospect of successfully defending the plaintiff's claim and accordingly there is no reason why the plaintiff's claim should go for trial. The defendants did not file any affidavit in opposition hereof. The plaintiff relied on the case of HCCC (Milimani) NO. 1186 of 2000 NATIONAL INDUSTRIAL CREDIT BANK LTD V RAPHAEL OBONYO OKELLO and particularly the following passage: -

“It is well settled that the procedure of summary judgment is to be resorted to in respect of liquidated demands only where it is plain and obvious that the defendant is truly and justly indebted to the plaintiff and there is no bona fide triable issues raised by the proposed defence or the defence already filed.”

The defendant's counsel even though served with a hearing notice did not attend court and indeed the plaintiff hereof has proved on a balance of probability that the defendants are justly and truly indebted to it.

The court therefore enters judgment in the following terms.

(1) Judgment for the plaintiff against the 1st, 2nd and 3rd defendants for kshs 622, 000/- with interest thereof.

(2) Costs of the suit are awarded to the plaintiff.

Dated and delivered at Nairobi this 15th day of April 2005.

MARY KASANGO

JUDGE

Read and delivered at NAIROBI by Azangalala J, this 15th day of April 2005.

F AZANGALALA

JUDGE

Read in the Presence of: