

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION – NAIROBI
CIVIL CASE NO.255 OF 2004

WILLIAM OLOTCH ::: PLAINTIFF

VERSUS

**PAN AFRICAN INSURANCE COMPANY LIMITED :::
DEFENDANT**

RULING

This is an application for an order confirming that the temporary conditional injunction issued on 30th July 2004 stands discharged. The application is expressed to be made under Order 39 Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The reason for the application is that the Plaintiff failed to pay the sum of Kshs 3 million within the 45 days as ordered on 30th July 2005.

The application is supported by an affidavit sworn by one Sharon Maviala a legal officer of the Defendant/Applicant. In opposition to the application is an affidavit sworn by the Plaintiff/Respondent.

Having carefully considered the application and the submissions of Counsel thereon, it appears to me that the only issue for decision in this application is whether or not the Plaintiff/Respondents payment by cheque of the said sum of Kshs 3,000,000/= on the last day of the period granted by the Court was payment in terms of the order of the Court.

The Defendant/Applicant is of the view that the said payment was not within the period granted by the Court since it would take three days to clear the cheque which in effect would be payment outside the period granted by the Court. In the circumstances the Respondent/Plaintiff failed to make payment within time.

The Plaintiff/Respondent on the other hand is of the opinion that he made payment within the period specified by the order of the Court when his Advocates delivered his cheque to the Applicant/Defendant's Advocates on 13th September 2004 even though this was the last day of compliance.

There is no dispute that the cheque was finally cleared and the Applicant received the proceeds thereof. A cheque is defined under the Bills of Exchange Act as a bill of exchange drawn on a banker payable on demand. In my view the payment by cheque made to the Defendants Advocates was payment to the Defendants. The Defendant's Advocates received the said cheque on 13th September, 2004 which was the last day for compliance in terms of the period granted by the Court. I have no doubt in my mind that the Plaintiff complied with the Order of the Court and I find and hold that the repayment by cheque received by the Defendant's Advocates on 13th September, 2004 was within 45 days given by the Court. In the premises the Defendant's application dated 21st February, 2005 has no merit and is dismissed with costs.

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY 2005

F. AZANGALALA

JUDGE

Read in the presence of: