



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**

**Civil Case 1020 of 2002**

**ALUTA HOLDINGS LTD.....PLAINTIFF**  
**VERSUS**  
**RAJ PARMAR.....DEFENDANT**  
**RULING**

In this application (by chamber summons dated 7th October, 2005) the Defendant, **RAJ PARMAR**, seeks an order that the Plaintiff, **ALUTA HOLDINGS LTD**, do serve the Defendant particulars of the plaint as requested for in the request for particulars filed on 22nd July, 2005. The Defendant says that the Plaintiff has failed, refused and/or neglected to provide the particulars and that the Defendant requires those particulars to enable him to prepare adequately for his defence and also comply with provisions of discovery. On its part the Plaintiff has opposed the application upon the grounds that the application is misconceived and otherwise overtaken by events; that the particulars requested for cannot be properly sought in view of the pleadings; and that the Defendant has the Plaintiff's list of documents filed on 22nd July, 2005 which contain all the particulars sought.

I have perused the plaint dated 14<sup>th</sup> August, 2002 and amended defence dated 26<sup>th</sup> May, 2003. The Plaintiff's claim as pleaded in paragraph 3 of the plaint is the sum of KShs. 1 million together with interest thereon at 24% per annum from 1<sup>st</sup> August, 2001 until payment in full, the same said to be the outstanding balance of a loan advanced by the Plaintiff and the Defendant. Full particulars are said to have been rendered and are well known to the Defendant. In paragraph 3 of the amended defence the Defendant denies that any contract was concluded between the parties as alleged in paragraph 3 of the plaint and avers that if there was any contract the same was between the Defendant and one Mr. Harit Sheth who is not a party to this suit. The Defendant pleads in the alternative and without prejudice that he was fraudulently induced by the said Harit Sheth, who was his advocate, to in effect commit himself to

the Plaintiff by a letter dated 30<sup>th</sup> June, 2002 addressed to the advocate in the sum claimed of KShs. 1 million. The Defendant further pleads that the said letter is privileged communication between him and his advocate and cannot be relied upon by the Plaintiff. The Defendant has also pleaded that there was not any or sufficient consideration in the alleged contract between himself and the Plaintiff. But the Defendant has not denied in terms that full particulars of the Plaintiff's claim were rendered to him and that they are well known to him as pleaded in plaint. It is to be noted that the Plaintiff has not pleaded in the plaint the letter dated 30<sup>th</sup> June, 2002, or any other letter for that matter.

I have seen the request for particulars dated 22<sup>nd</sup> July, 2005. The following particulars are sought of paragraph 3 of the plaint:-

- “(a) What date did the parties herein execute the alleged agreement and/or contract?”***
- (b) What was the principal sum advanced to the Defendant under the aforesaid agreement?”***
- (c) What were the terms and/or conditions of the alleged agreement?”***
- (d) What clause of the alleged contract provided for the payment of interest at the rate of 24% per annum?”***
- (e) What was the consideration for the advancement of the loan to the Defendant?”***

On 28<sup>th</sup> October, 2005 the Plaintiff filed particulars dated 25<sup>th</sup> October, 2005 as follows:-

**“Of paragraph 3;**

- (a) Not applicable as not so pleaded in paragraph 3. The effective date of the Plaintiff's claim being agreed upon by the Defendant is 30<sup>th</sup> June, 2000.***
- (b) The agreed outstanding balance payable was KShs. 1,000,000/=.***
- (c) See letter of 30<sup>th</sup> June, 2000 under item 1 of the Plaintiff's list of documents dated 22<sup>nd</sup> July, 2005 filed in court and served on you on the same date.***
- (d) See items 2, 3, 4 & 5 of the Plaintiff's list of documents.***
- (e) See item 1 of the Plaintiff's list of documents.”***

Miss Mwanzia, learned counsel for the Defendant, has submitted that these particulars are not the particulars requested for as the date when the loan was advanced is not given, the principal amount advanced is not given, the documents in the Plaintiff's list of documents do not provide the terms and conditions of the contract, demand letters are not contracts and the particular term of the contract

providing for interest at 24% per annum is not given, and that the list of documents does not address the issue of consideration for the loan advanced.

Mr. Desai, learned counsel for the Plaintiff, submits that paragraph 3 of the plaint does not refer to any loan but just to the balance outstanding. He further submits that the Plaintiff has filed his list of documents with copies of all the listed documents provided, which documents the Plaintiff will rely upon at the hearing. He points out that item 1 of that list of documents is a clear letter dated 30<sup>th</sup> June, 2000 giving full particulars of the sum claimed. In his view the letter is a strong foundation for the claim. He is of the view that if the Defendant thinks otherwise he should apply to strike out the plaint. He further points out that the said letter discloses what the principal sum was and the terms and conditions of the loan advanced. It is his further view that the basis of the interest claimed is provided for in items 2, 3, 4 and 5 of the Plaintiff's list of documents, and that the consideration is also set out in those documents. Mr. Desai pointed out that this is the second time the Defendant was seeking particulars, having done so the first time by a request dated 4<sup>th</sup> February, 2005. Indeed such a request is on the court record and is in the following terms:-

**"Of paragraph 3:-**

***(Provide)***

- (a) A copy of the alleged contract between the Plaintiff and Defendant.***
- (b) A copy of the letter of demand for the payment.***
- (c) Basis of charging interest at the rate of 24% p.a.***
- (d) What was the consideration?"***

Particulars dated 20<sup>th</sup> July, 2005 were provided by the Plaintiff as follows:-

**"Of paragraph 3.**

- (a) Cannot properly be the subject of a request for particulars.***
- (b) Cannot properly be the subject of a request for particulars.***
- (c) The agreement between the parties and the letter of demand dated 14<sup>th</sup> May, 2002 from Harit Sheth.***
- (d) Defendant's promise to repay the loan and pay interest thereon."***

Thereafter, on 22<sup>nd</sup> July, 2005, the Plaintiff filed his statement of issues as well as his list of documents

accompanied by copies of some five documents, including the letter dated 30<sup>th</sup> June, 2000 addressed to Harit Sheth advocate by the Defendant. It is to be noted that this letter featured in an application by notice of motion dated 12<sup>th</sup> March, 2003 in which the Plaintiff sought judgment on admission against the Defendant based on the said letter. Kasango, J. refused the application, but in doing so she held that the Plaintiff could rely on the letter though its terms were not so clear as to entitle the Plaintiff to judgment on admission based on the letter.

I have considered the submissions of the learned counsels. It seems to me that the Plaintiff has already put on the table, as it were, his entire case by providing copies of the documents that he shall seek to rely upon at the trial. He has provided the particulars sought as best he could. With respect, I think the Defendant is now on a fishing expedition.<sup>7</sup> He already has all the particulars of the Plaintiff's claim necessary to enable him to confront it. Indeed he has filed a defence and also an amended defence. The Plaintiff has drawn issues. The matter ought now to proceed to trial. The issue here is not the strength or sufficiency of the Plaintiff's case. That is a matter for the trial. The Defendant cannot as it were demand that the Plaintiff prove his case at this stage. That is to be done at the trial.

In the circumstances the application has no merit. It is hereby refused with costs to the Plaintiff. Order accordingly.

**DATED AND SIGNED AT NAIROBI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2005.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 9<sup>TH</sup> DAY OF DECEMBER, 2005.**