

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL CASE NO. 142 OF 1998

NATIONAL BANK OF KENYA LIMITEDPLAINTIFF

-VERSUSPAUL

KIBOR KEMBOI DEFENDANT

RULING

This case came for hearing on 6th December 2003. While the advocate for the defendant was present, the advocate for the plaintiff and the plaintiff were absent. It is clear from the records in the file that the case was fixed for hearing by the plaintiff's advocate at the court registry in the absence of the defendant. Therefore there appears to be no justifiable reason why the plaintiff and their advocate did not appear on the date of hearing.

Due to the non-attendance of the plaintiff and their advocate, counsel for the defendant Mr. Ngigi asked the court to dismiss the case of the plaintiff under Order 9B Rule 4 (1) Civil Procedure Rules. I have perused the Order and rule in question and observe that the court is only allowed to dismiss the plaintiff's suit if the defendant does not admit any part of the claim. Though the defendant's counsel submitted that the defendant did not admit any part of the claim, the defence filed does not support that position. There is an admission that the defendant obtained some financing from the plaintiff and no disclosure on how it was repaid. In view of this therefore, I will not dismiss the plaintiff's suit. I will however, award costs of defendant against the plaintiff for the attendance for the hearing on 6th December, 2003. It is so ordered.

Dated and Delivered at Eldoret this 4th Day of February, 2004.

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George Dulu,

Judge

Ruling read in the presence of Mr. Omboto for Ngigi.

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George Dulu,

Judge