



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION – MILIMANI**  
**CIVIL CASE NO. 755 OF 1996**

**POST BANK CREDIT LTD**

**IN LIQUIDATION:..... PLAINTIFF**

**VERSUS**

**SPECIALISED SUPPLIERS LTD :..... DEFENDANT**

**JUDGEMENT**

By a Plaint dated 26th March 1996 the Plaintiff instituted this suit against the Defendant seeking a sum of Kshs 5,872,535.70 together with compound interest thereon at the rate of 18% per annum from 31st December, 1995 until payment in full. The claim is pursuant to banking accommodation and facilities granted to the Defendant by the Plaintiff at the Defendant's request.

The Defendant filed a defence on 25th June 1996 in which it denied indebtedness to the Plaintiff in the sum claimed but averred that if it was indebted to the Plaintiff for any sum the same was far less than the sum claimed. There was also an averment that the interest charged was improper excessive and compounded arbitrarily and in the absence of agreement on the part of the Defendant.

The case came up for hearing before me on 11th April, 2005. The Defendant and its Counsel failed to attend despite a hearing notice having been served upon Counsel for the Defendant.

The Plaintiff called one witness Benjamin Bargetuny, the Plaintiff's Liquidation Assistant Manager. Before commencing his testimony, Counsel for the Plaintiff sought leave of the Court to amend the figure of the sum claimed from shs 5,872,535.70 to 5,727,722.85. I granted the leave sought and the figure was duly amended.

Benjamin Barngetuny, told the Court that he did debt collection in the process of liquidating the Plaintiff. In the course of his duties he came to know the Defendant as a client of the Plaintiff. The Defendant had on 10th March, 1993 applied for overdraft facilities of Kshs 3 million. The application was successful and the overdraft facilities were granted for the said sum for a period of 3 months. A letter of offer was on 27th April 1993 sent from the Plaintiff to the Defendant who in turn accepted the offer on 29th April 1993. The Defendant was allowed to draw the money. The expiry period for the facility was 5th July, 1993. However, by 28th September, 1993 the facility had not been repaid and by a letter of even date the Defendant proposed a mode of repayment. The repayment proposed was not kept. On 11th July, 1994, the Defendant wrote to the Plaintiff and promised to repay its entire indebtedness within six (6) months w.e.f. 11th August 1994. This proposal was not kept with the result that by the time the Plaintiff filed this suit the Defendant was still indebted to the Plaintiff. The witness produced as a bundle P.Ex.1 the Letter applying for the facility, the Letter of Offer, correspondence exchanged and a statement of account which showed that by 31st December, 1995 the Defendant was indebted to the Plaintiff in the sum of Kshs 5,727,722.85.

On the basis of the uncontroverted evidence tendered by the Plaintiff's witness, Benjamin Barngetuny I am satisfied that the Plaintiff has proved its case against the Defendant on a balance of probabilities and is entitled to judgment as prayed in the Plaint. The Plaintiff shall also have the costs of this suit.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MAY 2005.**

**F. AZANGALALA**

**JUDGE**