



REPUBLIC OF KENYA

**HIGH COURT AT MOMBASA**

**CRIMINAL APPEAL 268 OF 03**

**BANK LIMITED .....PLAINTIFF**

**VERSUS**

**KENYA CREDIT TRADERS LIMITED.....DEFENDANT**

**JUDGMENT**

The sum claimed in the Plaint arises as a result of the defendant having drawn promissory notes in favour of M/s Onida Electronics Limited which promissory notes were discounted by the Plaintiff on account of the said Onida Electronics Limited. P.w. 1 said that he was a banker with 45 years of experience and Onida Electronics Limited was their client whose business involved the importation of electronic goods, and who thereafter supplied the said goods to their clients in retail business. P.w. 1 said that Onida Electronics limited approached the Plaintiff requesting for credit which was to be advanced by discounting promissory notes given to them by their buyers. Pw 1 said that this is a common way of financing for traders.

The terms of that facility were contained in Plaintiff Exhibit No. 1, namely a letter dated 4th June 1998 and a credit agreement dated 15th June 1998.

Pw 1 said that it began to discount promissory notes made by the defendant and as far as the plaintiff was concerned, these bills were valid negotiable instruments. The defendant made payment of promissory notes, which fell due on 29th July, 13th August and 30th August 1998. The promissory notes, plaintiff's exhibit No. 2, have to date not been paid by the defendant. P.w. 1 in answer to the defence said that there was consideration in regard to these promissory notes in that the Plaintiff was a holder in due course and at the time of discounting the Plaintiff had no knowledge of any defect in title or notice of dishonour.

Pw 1 gave details of how the Plaintiff opens a local bill discounting account where the amount discounted is debited and the interest payable by the client is deducted at source. P.w. 1 gave the amount due and payable by the defendant in regard to these promissory notes as kshs. 4, 017, 472.50 with interest rate of 24% upto 31 December 1999 bringing the total amount to kshs 4, 228, 352. 20. The Plaintiff further claims interest at 28%, which was the prevailing rate from January 2000. Pw 1 said that the Plaintiff came to know of the dispute between the defendant and Onida Electronics Limited later but he said that it was not the concern of the bank whether the defendant received these goods.

D.w. 1 said that she was an accountant with the defendant. She confirmed that Onida Electronics Limited were suppliers of the defendant and she also confirmed that the defendant prior to 1999 honoured all promissory notes discounted by the Plaintiff. The Promissory notes, the subject of this suit were not settled by the defendant because onida Electronics Limited defrauded the defendant.

D.w. 1 did produce to this court evidence of such fraud and she said that both the defendants employees

and the employees of Onida Electronics Limited were arrested in relation to the goods that were not received by the defendant. D.w. 1 was of the view that the amount claimed hereof is payable by Onida Electronics Limited since the Plaintiff had not agreement with the Defendant on the payment of those promissory notes.

D.w. 1 on being cross-examined got very annoyed with the Plaintiff's counsel's question on whether the defendant received the Plaintiff's demand. Having had the benefit to hear the evidence and having regard to Plaintiff's exhibit No. 2 I am of the view that the promissory notes thereof are within the definition of section 84 (1) of the Bills of Exchange Act and the same were endorsed by the defendant in conformity with section 84 (2).

The defendant was heard to say through its counsel's crossexamination that the defence Exhibit NO. 1, the photocopies of the 14 promissory notes was an indication that the promissory notes had been altered to the extent of making them invalid. The defence failed to give evidence on the exact alteration that invalidated the promissory notes and it is in the defence submission that counsel alludes to those alteration. This is not acceptable way of prosecuting a case for it is tantamount to the defence counsel giving evidence.

That as it may be having regard to the alleged alteration, I am of the view that it is not the alteration envisaged by Section 64 and accordingly the promissory notes are not invalid. Defence by its submission raise an issue that the Plaintiff's plaint is deficient because it does not conform to the requirements in the book Bullen & Leake & Jacob "Proceedings of Pleadings" 13th Edition page 96. The defence fails to state how the plaintiffs plaint contravenes the Bill of Exchange Act under which this action is brought that being the case, I hold that the Plaintiff's plaint valid as drawn, this allegation, as rightly stated by the Plaintiff's counsel, was not raised in the defendant's defence. In regard to the agreed issues, I wish to deal with them all together because they are interrelated.

The Plaintiff through the evidence of P.w. 1 clearly adduced evidence and showed that the Plaintiff gave value for the promissory notes and the consideration was indeed given thereof. The Plaintiff, through the evidence of Pw 1, proved it had a good title to the promissory note and the discounting of the same was done in good faith without knowledge of the non delivery of goods by Onida Electronics Limited to the defendant. The Defendant was served with notice to dishonour, D.w 1 accepted this. Having heard the evidence I am of the view that the Plaintiff has proved its claim against the defendant on a balance of probability. The defendant on the other hand was totally deficient in its proof of the defence filed herein and the only reason given by D.w. 1 why payment was not made by the defendant was because the defendant had been defrauded by Onida Electronics Limited. The Plaintiff is entitled to claim interest from the Defendant as provided in Section 57 (ii) of the Bill of Exchange Act. The Judgment of this court therefore is as follows: -

(i) That judgment is entered for the Plaintiff against the defendant for Kshs 4, 228, 352. 20 with interest at the rate of 28% per annum from 1st January 2000.

(ii) Those costs of this suit are awarded to the Plaintiff.

Dated and delivered this 4th October 2004.

**MARY KASANGO**

**AG. JUDGE**