



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. 128 OF 1998**

NATIONAL BANK OF KENYA LTDPLAINTIFF

VERSUS

BITS (AGENCIES) LIMITED1ST DEFENDANT

HON. BOAZ C. KIANO (BOAZ KIPCHUMBA KIANO)

KIPCHUMBA KAI.....2ND DEFENDANT

LABAN KORELLA.....3RD DEFENDANT

JAREMIAH D. ONYANGO.....4TH DEFENDANT

JUDGMENT

The Plaintiff's claim against the 2nd defendant is in respect of his guarantee for facilities granted to the 1st defendant by the Plaintiff.

P.W. 1 stated that he had worked for the Plaintiff in its recovery department for more than 10 years. That is the department that deals with recovery of loans that have become irregular in their service.

P.W. 1 said that Page 1 of the Plaintiff's exhibit 1 was a loan application by the 1st defendant, for kshs 445, 000/- /. The facility was to enable the first defendant to purchase chlorine to be supplied to Nairobi City Council. The 1st defendant applied for the said amount to be given in form of a bank draft and in foreign currency.

The Plaintiff responded to that request of a facility by writing to the 1st defendant a letter of offer which stated that amount being offered was kshs 440, 000/- and the same was payable within 2 months.

The Plaintiff requested for security and the 1st defendant provided a letter of undertaking from the Nairobi City Council. In that letter of undertaking the Nairobi City Council undertook to remit the amount payable to the 1st defendant directly to the 1st defendant's account with the plaintiff.

The Plaintiff sought and obtained personal guarantees of the 2nd, 3rd and 4th defendant.

P.W 1 refer to page 35, which he said was proof that the bank draft was granted to the defendant. On being granted the same P. W 1 said that the 1st defendant failed to pay bank the said amount to the plaintiff. On the amount being demanded the 1st defendant responded by asking for a grace period and by making specific offer to settle that is in pages 26, 27 and 36 of Plaintiff exhibit 1.

P.W 1 said that pages 31 to 34 were the 1st defendant's statement; he pointed out that the amount

claimed in this action was reflected, that is kshs 543, 970./ 40 and the same was subject to 30% interest rate. The rate of interest of 30% per annum was the rate in the letter of offer page 3. P.W 1 sought judgment in favour of the plaintiff as prayed in the Plaint.

Having had the opportunity to hear the testimony of P.W 1 and having regard to the exhibits I am of the view that the plaintiff has on a balance of probability proved its claim.

The Plaintiff proved that it offered the facility of kshs 440, 000 to the 1st defendant and also proved that the 2nd defendant guaranteed that facility.

The plaintiff on page 7 of its exhibits provided proof of demand to the guarantors, who to date have not paid their liability. It is noteworthy that judgment has been entered against all the other defendants except 2nd defendant.

The 2nd defendant was served with a hearing notice but when the case was called out he was not present.

The judgment of this court is as follows: -

(1) Judgment for the Plaintiff as against the 2nd defendant for kshs 440, 000 with interest at the rate of 34% per annum from 9th January 1998 until payment in full.

(2) Costs of the suit are awarded to the plaintiff.

Dated and delivered this 12th day of November 2004.

MARY KASANGO

AG JUDGE