

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 375 OF 1999

DOSHI OF COMPANY (K) LIMITED PLAINTIFF

- VERSUS -

DATINI MERCANTILE LIMITED DEFENDANT

R U L I N G

Before the Court is an application by Notice of Motion brought under the Provisions of order 35 rule 1 of the Civil Procedure Rules by the plaintiff seeking to have summary judgement entered against the defendant. The application is supported by an Affidavit sworn by Pravin Ravjibhai Patel on 8th February, 2001. There has been no reply to the same by the defendants who despite having been served with a hearing Notice, did not attend on the appointed date. The Court having satisfied itself that the hearing notice had been served proceeded to hear the application.

The plaintiff filed it's claim on 24/8/99 and the defendant filed a Defence on 25/9/99. In their defence, the defendant says the following in answer to the claim.

“3. The defendant is a total stranger to the contents of paragraph 3 of the plaint and denies the same putting the plaintiff to strict proof.

4. The defendant avers that there was never any contract nor arrangement at all between the plaintiff and the defendant for the sale and/or delivery of any goods during the time in issue.

5. Demand and Notice of intention to sue are of no valid consequences in the light of the foregoing.

6. The defendant fully denies the claim as set out in paragraph 6 of the plaint and puts the plaintiff to strict proof thereof”

To the Affidavit in support of the application are annexed 2 letters from the Defendant's Advocates. The first one is dated 4th June, 1999 addressed to the plaintiff's Counsel in which they admit the debt and request to be indulged in that they wished to clear the debt by 2 equal instalments. They also enclosed a copy of a contract entered into between them and a Third party and in it the Defendant was to earn Kshs.292 million. It was on the strength of this contract that they requested for 2 months instalments.

On the 23rd June, 1999 again the Defendant's lawyers wrote to the plaintiff's lawyers confirming payments would be made by end of July, 1999. This however was never to be as no payment was ever received.

From the letters referred to above, there is no doubt that the debt is admitted. I have already referred to the defence filed herein which no doubt is a general detail and raises no triable issues in the light of the clear admission. It is in the light of this that I enter judgement for the plaintiff in the sum of Kshs.1,697,178.96 plus costs and interest.

Dated and Delivered at Mombasa this 14th day of February, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE