REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.800 OF 1993

KENYA FINANCE CORPORATION …….…….. PLAINTIFF
VERSUS
ANILKUMAR KAMDAR ……. DEFENDANT

R U L I N G

The application before the court is a Notice of Motion dated the 18th March 1994 filed by KENYA FINANCE CORPORATION LIMITED (the Plaintiff) against ANILKUMAR KAMDAR (the defendant) for judgment as prayed in the plaint.

The Plaintiff's claim against the defendant is for a sum of KSh.250,765.10 being the balance of amount inclusive of agreed interest upto the 22nd November 1993 due and owing by the defendant to the Plaintiff arising under Hire Purchase Agreement dated the 3rd March 1988 under which the plaintiff advanced funds to the defendant to enable him purchase motor vehicle Reg. No.KXU 970 on the usual Hire Purchase Agreement terms, with interest until the funds so advanced are paid in full.

Inspite of demands and intention to sue, the defendant refused and/or neglected to pay up.

In a defence filed on 3rd March 1994 the defendant pleaded at Clause 2 thereof:

> ***"2. The defendant denies paragraphs 3, 4 and 5 of the plaint and puts the plaintiff to strict proof of the claim thereof."***

There are no grounds of opposition to the motion and no replying affidavit has been filed by the defendant, despite service of the motion.

In support of the application, however, Mr. Munyithya advocate, for the plaintiff relies on the affidavit of the plaintiff's Branch Manager Mr. Simeon Nimrod Taabu and annextures thereto, which are: the proposal for the advance, duly signed on page one by the Applicant (Defendant); Hire Purchase Agreement also duly signed by the Defendant and a Banker's Order.

This is a classic case where the defence to the suit is a mere denial. Though Mr. Munyithya has withdrawn prayer (1) in the motion, seeking the striking out of this defence, the court can do so suo moto.

Consequently the defence filed by the defendant is hereby struck out under Order VI Rule 13(1) (c) as it will merely delay the fair trial of the action and judgment as prayed is hereby entered for the plaintiff.

It means the application dated 29th April 2002 set to be heard on 1st July 2003 has now been overtaken by this ruling.

I award the plaintiff costs of his application and costs of the suit.

It is so ordered.

Dated and delivered this 30th June 2003.

A.G.A. ETYANG

JUDGE