

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

CIVIL SUIT NO. 264 OF 2001

BAWANI STORES LIMITEDPLAINTIFF

VERSUS

NAROK COUNTY COUNCILDEFENDANT

RULING

This is an application under Order XXXV Rules 1 (a) and 2 of the Civil Procedure Rules (hereinafter referred to as “the Rules”). In it the Plaintiff seeks the following order:

“1. THAT this Court be pleased to enter Summary Judgment to the extent of Kshs. 592,122.10 plus interest at the rate of 4% per month from the da te of default till full payment”

The application is supported by the affidavit of Mr. Satish Shah sworn on February 7, 2002. The Plaintiff’s case is that between 1995 and 1998 the Defendant ordered goods and services from it worth Kshs. 592,122.10 which was payable upon delivery. In support of the claim was annexed copies of Local Purchase Orders and invoices issued by the Plaintiff to the affidavit of Mr. Shah. The Local Purchase Orders required supply of the goods and services to Purko Sheep Ranch to which most of the invoices were addressed.

In the Replying Affidavit of Joseph Kanyoni, the County Clerk of the Defendant, sworn on June 13, 2002 it was denied that the Plaintiff supplied goods and services to the Defendant as was alleged in the affidavit of Mr. Shah. He also stated that some invoices were not supported by any Local Purchase Orders.

There are numerous authorities that emphasize the point that Summary Judgment will not be entered where there are issues on which the Court is unable to form a firm opinion on the matters raised at the time of the order (see **Kindanlal Restaurant v. Devshi Shrupy** [1952] EACA Volume XIX at p. 77 cited with approval in **Kirani Shah v. Veljee Devshi & Bakrania** MILIMANI HCCC NO. 617 OF 1998. Looking at the Local Purchase Orders and invoices relied on by the Plaintiff and which are denied by the Defendant, it is difficult for this Court to confidently decide at this point whether the Defendant entered into the transaction leading to the claim or whether the Plaintiff was dealing with the Third Party in whose name most of the invoices were drawn. On this conclusion alone, the Plaintiff’s application must fail.

I, therefore, dismiss the Plaintiff’s application dated March 5, 2003 with costs to the Defendant.

Dated and Delivered at Nakuru this 17th day of June, 2003.

ALNASHIR VISRAM

JUDGE