



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 623 OF 2000**

KENYA COMMERCIAL BANK ..... PLAINTIFF

VERSUS

KENEDY KIPRUTO ROITICH ..... 1ST DEFENDANT

KARISSA NZAI MUNYIKA t/a

NZAIKEN ENTERPRISES..... 2ND DEFENDANT

**R U L I N G**

Kenya Commercial Bank Ltd. (the Plaintiff) has filed the Notice of Motion dated 24th October 2002 now before the Court seeking summary judgment for KSh.535,000/- plus costs and interest be entered against Kennedy Kipruto Rotich and Karisa Nai Munyika t/a Nzaiken Enterprises (the Defendants).

The grounds in support of this application are that the defendant's defence is a sham and its purpose is to delay the finalization of this suit and therefore cause great loss to the plaintiff. The other grounds are that the defence does not raise any triable issue and the defendants are truly indebted to the plaintiff to the extent of Ksh. 535,000/=

The facts which Mr. Francis Kahindi Charo, the plaintiff's advances officers at its Kilifi branch, are that the defendants were granted an overdraft facility on 29th December 1995 to provide working capital for their auto spares business. The security charged to the plaintiff was the already existing charge of Ksh. 100,000/= over L.R. Gede/Mida Majaoni/132 Kilifi with chargeable interest at 32%

The defendants defaulted in servicing the said loan and plaintiff made several attempts to exercise its statutory power of sale of the charged property through auction but failed to attract favourable bids. Hence this suit.

In a joint defence filed on 24th April 2001, the defendants denied that they are indebted to the plaintiff in the said sum of Ksh. 535,000/= and called for strict proof. They also pleaded, on without prejudice basis, that subsequent to their failure to service the loan they and the plaintiff entered into a subsequent arrangement whereby they were allowed to liquidate the claim in monthly installments which they were doing until the suit was filed. In a separate defence filed on 3rd May 2001, the 1st defendant pleaded that interest rate being charged on the loan is unreasonable, arbitrary and without any justification whatsoever.

Mr Chitembwe advocate, acting for the plaintiff, has submitted that the defences of the defendants are a sham and no triable issues are raised. In any case, no grounds in opposition and no replying affidavits have been filed by the defendants despite service of this motion upon them.

Indeed, the defendants are defended by M/s Kabuki & Co Advocates who were served with the hearing notice to appear before the court on 4th June 2003 but did not attend court. Even if they had appeared they would not have addressed the court as no grounds of opposition and/or relying affidavit were filed.

I do hold that no triable issues are raised in defences filed by the defendants and the same are hereby struck out. Summary judgement in the sum of Ksh. 535,000/= is entered for the plaintiff against the defendants as prayed in the plaint, with interest at court rates and costs of the suit.

It is so ordered.

**Dated and delivered by Mombasa this 5th June 2003.**

**A.G.A. ETYANG**

**JUDGE**