



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 3108 OF 1985

THABITI FINANCE COMPANY LTD.PLAINTIFF

VERSUS

FRANCIS NJIRU NJAGEH.....DEFENDANT

JUDGEMENT

The Plaintiff originating this case was filed in 1985, but it could not be heard for some time as the file was lost. The file was only recently reconstructed, following an application by Chamber Summons made by the Plaintiff, filed in the High Court on 16th April, 2003, and heard and determined on 20th June, 2003.

Although the hearing notice was duly served on the Defendant, the Defendant was not represented at the hearing.

The witness for the Plaintiff, Ms Mary Ngati, is an employee of the Deposit Protection Fund, the body that took over the financial affairs of the Plaintiff company when this company went into liquidation. She said that, the Deposit Protection Fund, with which she has worked for some 13 years, is entrusted with the responsibility of receiving all dues in respect of those corporations that fall under receivership.

The witness gave evidence that, a loan account had been opened at the Plaintiff finance company for the Defendant, Mr. Francis Njiru Njageh, in 1983. She produced a letter of offer which the Plaintiff, at that time, wrote to the Defendant, asking him to give his approval by signature for a loan advance of Kenya Shillings 162,000. This loan was to be repaid in a period of twenty-four months, by monthly payments of Kenya Shillings 8,100. The security for this loan was a Nissan Matatu vehicle, Registration Number KUM 359. The witness gave evidence that the Defendant had thereafter made a first repayment, of Kenya Shillings 8,100 in April 1983, and then a further payment of Kenya Shillings 4,000 in July, 1983. The witness produced a statement on the loan account, showing that the Defendant did not make loan repayment in accordance with the agreement that had been made between the parties.

The entries in the loan account showed that the Plaintiff had recorded certain credits in favour of the Defendant, as follows: -

- (i) 11th May 1984 Kshs.20,000.00
- (ii) 16th May 1984 Kshs.6,250.00
- (iii) 20th June 1984 Kshs.32,500.00
- (iv) 20th June 1984 Kshs.71,250.00

This came to a total of Kshs.130,000.00, which left still unrepaid a balance of Kshs.86,944.00.

Mr. Ougo for the Plaintiff prayed that the Defendant be ordered to pay -

- (i) The unpaid principal sum of Kenya Shillings 86,944;
- (ii) Interest on that unrepaid amount; and
- (iii) Costs of the suit.

This is a straightforward case in which there is a creditor, a debtor, and a specific mode of quantifying the debt. It is not disputed that the debtor is indebted to the creditor.

I find in favour of the Plaintiff, and determine that the Defendant is liable to pay to the Plaintiff under the following heads: -

- (a) An amount of Kenya Shilling 86,944.00;
- (b) interest on the amount set out under (a); and
- (c) The costs of the suit.

DATED and DELIVERED at Nairobi this 20th day of November, 2003.

J.B. OJWANG

Ag. JUDGE