

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMEMERCIAL COURTS

CIVIL CASE NO.2228 OF 2000

CO-OPERATIVE BANK OF KENYA LTDPLAINTIFF

V E R S U S

CHARLES LANGAT & ANOTHERDEFENDANT

R U L I N G

The plaintiff by this Notice of Motion brought under Order 35 Rule 1 and 2 seeks orders that summary judgment be entered against the defendants as prayed in the plaint.

The application is based on the ground that the defendants have no valid and/or plausible defence to the plaintiff's claim in this suit.

In his plaint the plaintiff claims against the defendants jointly and severally a sum of Shs.1,743,775.85 together with interest thereon at the rate of 24.75 per annum compounded on monthly balances from 18.11.2000 until payment in full being the amount due and owing from the 1st and 2nd defendants to the plaintiff on the account of banking accommodation and facilities granted to the defendants said business by the plaintiff through its Nakuru Branch sometimes in the month of May 1998 full particulars which are well within the defendant's knowledge. The defendants have filed statements of defence in which they deny that the plaintiff entitled to the claim sought of Shs.1,743,775.85 or any sum at all. They deny any agreement to the interest sought at 24.75% per annum compounded or at any rate at all. They have also denied that there was agreement between the plaintiff and the defendants for the granting of any banking accommodation and facilities to the defendants.

The plaintiff seeks summary judgment. The general rule is that leave should be given unconditionally unless there is a good ground for thinking that the defence put forward is no more than a sham. If defendant swears a reasonable ground of defence or a bona fide defence or facts which may constitute a plausible defence, he must be given leave to defend. In deciding whether the defendant has done this the court must have regard to the merits of the application as disclosed in the pleadings and affidavits.

Counsel for the plaintiff submitted that the defence is a mere denial. A mere denial is not a sufficient defence in this type of case.

There must be some reason why the defendant does not owe the money. The defendants state that they never entered into any agreement with the plaintiff for either a loan or banking facilities nor was there agreement as to payment of interest at 24.75% per annum compounded on balances. These are triable issues. I am of the opinion that the grounds of defence are reasonable and bona fide and therefore the defendants are entitled to unconditional leave to defend.

The application is dismissed with costs.

Dated at Nairobi this 21st day of February, 2002.

J. L. A. OSIEMO

J U D G E