

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1621 OF 2000

BARCLAYS BANK OF KENYA LIMITED PLAINTIFF

VERSUS

JUSTINE WANZA KITUNDU T/a KIWAS CRAFTS

LT.COL.(RTD) JONNIE CHRISTOPHER KITUNDU) DEFENDANTS

R U L I N G

The Plaintiff in a Plaint dated 25th August 2000 is seeking judgment to be entered for it and against the Defendants jointly and severally for K.shs 1,387,428/15 together with interest thereon at the rate of 33% per annum with effect from 1st August 2000 until payment in full. It is also seeking costs. This is the amount the Plaintiff claims is owed to it by the First Defendant in respect of monies advanced to the first Defendant the which payment was guaranteed by the Second Defendant. The defence to the same claim is comprised of denials only.

At the close of the pleadings this application seeking summary judgment was filed on 31.10.2001 on grounds that the defence raises no triable issue and that the Debt is admitted vide letter dated 24.3.1998. It is supported by an affidavit sworn by the Manager at Debt Recovery Unit of the Plaintiff Bank. Several exhibits are annexed to the same affidavit. The application together with affidavit and annexures were served upon the Respondent's counsel but the same Respondents have not filed any document in opposition to the application. Further although served, they have not attended the hearing and neither have their counsels. The matter therefore proceeded exparte.

I have considered the application. It is merited. There is no defence worth considering as all that the Defendants state in their defence is a mere denial. Further there is clear admission in letter dated 24.3.1998 in which the Defendant's state as follows inter alia:

“I am admitting that I have seriously defaulted in payment of the owed loan, but the reason is that I have had problems with my client in London. I have been chasing for my money in London for the last 2 years to no avail up to date.

First Defendant then proceeds to give a proposal in that letter as to how he was going to pay the amount outstanding. The Bank statement annexed by the Plaintiff shows that the same proposals were not honoured. The Applicants have made efforts to realise the security but that has not resulted into any success as there were no proper bids for the security (see RM4). The Second Respondent was the guarantor of the same facilities advanced to First Respondent. He has not denied this.

This application succeeds. It is granted as prayed. Costs to the Applicant.

Orders accordingly.

Dated and delivered at Nairobi this 12th day of February 2002.

ONYANGO OTIENO

JUDGE

