

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 257 OF 2000

VINODKUMAR RAMDATMAL PLAINTIFF

VERSUS

MEHBOOD ALI KHANDEFENDANT

J U D G M E N T

The plaintiffs claim against the defendant is for a permanent injunction to restrain the defendant from doing business or trading or in any manner howsoever transacting business as Anvi Metal Works. At the same time he seeks to recover from the defendant the sum of Shs.1,271,000/= together with interest thereon at the rate of 15% per annum being the amount of money which the defendant obtained fraudulently from sums of money due and owing by the Department of Defence to the plaintiff.

Although the defendant has filed a defence through his advocates M/S Wasuna & Co. Advocates and was served with a hearing notice on 16.11.2001, neither he nor his advocate were present in court on 15.5.2002 when the suit was called on for hearing outside the court. Upon being satisfied that a hearing notice was duly served, the court ordered the matter to proceed to hearing ex parte.

At the hearing of the case, only the plaintiff gave evidence. That evidence revealed that the plaintiff was the owner of a business known as Anvi Metal Works which had a contract with the Department of Defence for the repair and servicing of motor vehicles belonging to the Department. Sometime on or about 29.1.1999 the defendant, who previously had been an employee of the plaintiff, with intent to defraud the plaintiff, fraudulently procured the registration of a firm bearing similar names to that of the plaintiff, namely ANVI METAL WORKS and through the firm proceeded to obtain from the Department of Defence the sum of Shs.1,271,000/= which the defendant knew was due and owing by the said Department to the plaintiff. How the defendant managed to get the firm so registered with exactly the same business name as that of the plaintiff, remains a mystery.

But be that what it may, on the basis of the evidence before me, I am satisfied that the plaintiff has established his claim against the defendant on a balance of probability. Accordingly, I enter judgment in his favour against the defendant as prayed in the plaint with costs and interest.

Dated at Nairobi this 17th day of May, 2002.

T. MBALUTO

JUDGE