



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 1515 OF 2001

**MAFUTA PRODUCTS LIMITED .....PLAINTIFF**

**VERSUS**

**UNIVEC PETROLEUM LIMITED .....DEFENDANT**

**RULING**

This is an application by the Plaintiff for summary judgement against the Defendant under Order 35 of the Civil Procedure Rules.

The Plaintiff's claim against the Defendant is for Shs.1,582,000.00 being the amount due for petroleum products supplied by the Plaintiff to the Defendant at the Defendant's request and instance between June and September 2001.

As payment for the products, the Defendant issued and passed over to the Plaintiff the following cheques which upon presentation for payment were dishonoured; -

- (i) 23.7.2001 000122 Shs.392,000.00
- (ii) 20.7.2001 000121 Shs.602,000.00
- (iii) 24.7.2001 000125 Shs.588,000.00

The Defendant admits to have received various petroleum products from the Plaintiff and admits to have issued the said cheques but states that the same were given as security for a debt and the same were to be returned to the Plaintiff when the debt was paid for in cash. He further submits that the debt was duly paid and the Plaintiff was to return the said cheques to the Defendant which he did not do but went ahead to bank them illegally. But the Defendant did not produce any receipt issued to him when he alleges he paid the debt in cash nor did he produce any evidence of payment as alleged. I agree with the Plaintiff that the Defendant's defence filed herein does not raise any triable issue and that the Defendant is justly and truly indebted to the Plaintiff as prayed in the Plaintiff.

The Court of Appeal in TRUST BANK LTD. AND ANOTHER V. INVESTEL BANK LTD. AND THREE OTHERS, CIVIL APPEAL NO. 258 AND 315 OF 1999 (Consolidated) said: -

**“Order 35 Rule 1 empowers the Court, where a Plaintiff has a liquidated claim, on being appropriately moved to enter summary judgement where the Defendant's claim clearly raises no reasonable triable issue or where the defence is merely a sham to obtain a quick summary judgement without being unnecessarily kept from what is due to him by delaying tactics of Defendant..”**

Having found that the Defendant's defence filed herein does not raise a bonafide triable issue, the Plaintiff is entitled to judgement.

Accordingly, I enter summary judgement for the Plaintiff against the Defendant for Shs.1,582,000.00 together with costs and interest as prayed in the Plaintiff.

**DATED at Nairobi this 28th day of June 2002.**

**J.L.A. OSIEMO**

**JUDGE**