

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 190 of 2000

KENYA COMMERCIAL BANK LTD PLAINTIFF

VERSUS

CHARLES MULEI MULINGE DEFENDANT

R U L I N G

By the Notice of Motion dated 29/3/2001 brought under Order 35(1) Civil Procedure Rules the applicant who is a bank seeks summary judgment in the sum of Shs.736,841/85 arising out of a contract to lend money by the Bank to the Defendant at the request of the defendant. The terms of the contract are set out in the letter of offer dated 15/6/95 exhibited. There is also a charge made in favour of the Bank over the property of the defendant. The defendant has filed a defence and a replying affidavit. Paragraph 8 of which he says – “I had agreed to pay up whatever the plaintiff was demanding just to avoid legal tussle” He also strongly disputed the rate of interest charged. My observation is that the Defendant entered into the borrowing contract with his eyes open. He cannot now be said to plead illiteracy or fraud and misrepresentation unless he is able to prove these allegations. No details of such allegations are given and therefore they remain only allegations not proved and the defendant admitted the indebtedness.

On the issue of the rates of interest the bank reserved to itself the power (right) to charge such rates as it may in its sole discretion from time to time to decide. In that case the court is not able to interfere with contract entered between the parties. However under the Civil procedure Act the court has power to award interest in claims filed in court at the rates permitted thereunder. I therefore find that the defence and the replying affidavit disclose no defence to the Plaintiff’s claim. Application is therefore allowed. Judgment shall be entered as prayed in the plaint with costs of this application to the Plaintiff/Applicant. On the issue of interest the court orders that the court rate of 14% shall prevail after filing of the suit until payment in full.

Dated at Mombasa this 19th Day of June, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE