



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.712 OF 1991

NARODHAS (K) LTD. PLAINTIFF

VERSUS

BANDARI ELECTRICAL & HARDWARE LTD 1ST DEFENDANT

MUSTAFA M. K. LAKHA 2ND DEFENDANT

R U L I N G

This suit was filed in 1991. The plaintiff claims Shs.4,731,710.35 with interest at 4.5% per month from 1/4/91 until payment in full.

Defendants denies the claim but admits owing some money unspecified under paragraph 3 of the statement of defence.

In the exhibit numbered 18 – an affidavit of Murtafa Lakha filed on 25.10.91, the 2nd defendant swore that they were indebted in the sum not exceeding Sh.1,356,597.05. There is long delay in the prosecution of this suit which the plaintiff explains in paragraphs 10 and 11 of the replying affidavit. It is surprising the defendants have not thought of applying or dismissal of suit for want of prosecution.

Be that as it may, I have perused the replying affidavit of Mr. Lakha and I see that he disputes the claim against himself, and makes other allegations. However in the defence paragraph 3 is made for both defendants.

I have examined the promissory notes exhibited and it is clear the second defendant endorsed his signature on the same signifying his personal liability. Since this suit was filed no payment has been made although there was admission of part of the claim.

In the circumstances of this case I am satisfied that the Plaintiff is entitled to judgment as prayed in the plaint. However the rate of interest shall be at court rates from the date the suit was filed.

There is no defence to the Plaintiffs claim what the Defendant are proposing to do is to delay the day of judgment by raising disputes where there is none. The exhibits speak for the themselves. They issued the promissory notes and have failed to honour them. They have not denied taking the loan in the first place. The defence filed is a sham for the purpose of delaying payments.

It is in the interest of justice that litigation should come to an end to avoid clogging the court diary. In a clear case such as this the Plaintiff is entitled to judgment. The issues raised as to interest cannot be

triable issues. The parties agreed to the rate of interest and the court will not interfere with such agreements. However in this case where there has been so much delay, the interest shall be at court rates from date of filing of the suit till payment in full.

The application is allowed, summary judgment is entered for plaintiff as prayed in the plaint, together with costs of this application.

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

J.
COMMISSIONER OF ASSIZE

KHAMINWA

Read in presence of Mr. Mogaka and Mr. Njoroge.

J.
COMMISSIONER
19.6.2000

OF

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