

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1356 OF 2001

NATIONAL INDUSTRIAL CREDIT BANK LTD.PLAINTIFF

VERSUS

PAUL KIPNGETICH KIRUI 1ST DEFENDANT

BHOGALS GARAGE LIMITED 2ND DEFENDANT

RULING

The Plaintiff by way of this Chamber Summons expressed to be brought under Order 35 Rule 1(1) and Rule 2 of the Civil Procedure Rules seeks orders that the 1st Defendant defence be struck out and summary judgement be entered for the Plaintiff against the 1st Defendant.

The application against the 2nd Defendant was withdrawn with costs.

The application is based on the ground that the defence filed herein is a sham and is aimed at delaying the course of justice. That the defence is frivolous, vexatious and otherwise an abuse of the process of the Court. That the 1st Defendant does not have any defence to the Plaintiff's claim and lastly that the Plaintiff's claim is a liquidated claim.

Briefly the Plaintiff's claim is that by a hire purchase agreement No. 40/013868/11 made at Nairobi between the Plaintiff and the 1st Defendant on or about the 8th November 1996 the Plaintiff agreed to and did finance the hire purchase by the 1st Defendant of motor vehicle registration No. KAH 944J in the principal sum of Shs.960,000/- which the Defendant agreed to repay by an initial deposit of Shs.159,000/- payable directly to the dealer and the balance to be repaid to the Plaintiff by monthly rentals for a term of thirty six (36) months together with contractual Hire Purchase charges and/or interest agreed at Shs.439,028.00 calculated at 18.27% per annum and on security of the said motor vehicle. The 1st Defendant thereby agreed and was bound to pay the total hire purchase price of Shs.1,250,028.00 by 35 monthly rentals or hire purchase instalments of Shs.34,450/- with effect from 11.12.1996 and a final rental or instalment of Shs.35,778.00 (inclusive of Shs.1500/- on account of his option to purchase on or before 11.11.1999.

In past payment of the hire purchase stated above the 1st Defendant paid the sum of Shs.566,000/- only during the period between the 28.11.1996 and 15.7.1998 by various instalments. Accordingly the Defendant fell in arrears on account of the hire purchase in the sum of Shs.709,028/- whereupon the Plaintiff applied additional interest of Shs.459,273/- totaling Shs.1,158,301/- which forms the Plaintiff's claim as indicated in the plaint.

The Defendant was served but did not appear to defend the Plaintiff's claim. This application is brought under Order 35 of the Civil Procedure Rules. Order 35 is intended to enable a Plaintiff with a liquidated claim to which there is clearly no good defence to obtain a quick and summary judgement without being unnecessarily kept from what is due to him. The Plaintiff has demonstrated that his claim is liquidated. As I have stated above, the Defendant was served but did not attend to defend the Plaintiff's claim. Normally a Defendant who wishes to resist the entry of summary judgement should place evidence by way of affidavits before the judge showing some reasonable ground of defence and if he is able to raise a prima facie triable issue, he is entitled in law to unconditional leave to defend. This the Defendant has not done and the Plaintiff has demonstrated that this is a proper case for summary judgement.

Accordingly, I enter summary judgement for the Plaintiff as prayed in the sum of Shs.1,158,301.00 with costs and interest.

DATED at Nairobi this 27th day of November 2002.

J.L.A. OSIEMO

JUDGE