

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO. 1227 OF 2000

NATIONAL BANK OF KENYA LIMITED PLAINTIFF

VERSUS

RAJESH KAPOOR 1ST DEFENDANT

VALEO (K) LIMITED 2ND DEFENDANT

JUDGMENT

This claim arises from the use of a credit card issued by the plaintiff to the defendant.

The plaintiff is a limited liability company incorporated in Kenya. On 9.3.1996, the 1st defendant who is an individual applied to it for and was issued with a Visa International Card. The terms and conditions of issuance of the card are contained in an agreement signed by the parties on 16.5.96. One of those conditions was that the 1st defendant would repay to the plaintiff any charges which the plaintiff would incur in connection with the 1st defendant's use of the card. Interest on such charges would be levied at the rate of 7% per annum. That sum was however reduced to 3.5%. The 2nd defendant guaranteed repayment of the sums aforesaid.

According to the evidence tendered by the plaintiff's witness, after the card had become operational and the plaintiff had demanded payment without receiving any from the defendant, it was realised that the account was building up too fast. Consequently a decision was unilaterally made to restructure the account and to transfer the amount then outstanding to a new account with a lower rate of interest of 23% per annum which was equivalent to 1.9% per month. The restructured account was given a new number 427 35 000 200 7739. However, despite that indulgence, the 1st defendant did not service the account and as at 31.12.2000, the sum of Shs.689,917/11 was outstanding thereon. That is the amount the plaintiff claims against the defendants.

On the basis of the evidence tendered herein, I am satisfied that the plaintiff has established its case against the defendants on a balance of probabilities. Accordingly, I enter judgment in its favour against the defendants, jointly and severally, for Shs.689,917/11 together with interest thereon at the rate of 23% p.a. from 1.1.2001. The defendants will jointly and severally bear the plaintiff's costs of the suit.

Dated at Nairobi this 19th day of January, 2001.

T. MBALUTO

JUDGE