

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL SUIT NO. 2686 OF 1998**

MEGTREND ENGINEERING & SUPPLIES LTD.....PLAINTIFF

-VERSUS-

IDEAL OFFICE PRODUCTS LTD.....1ST DEFENDANT

LEVI O. OBONDO.....2ND DEFENDANT

RULING

In this Application the applicant is asking for the Defence to be struck out as it amounts to a sham. In the Supporting Affidavit to this application in paragraphs 2 and 3, Mr. Dourado who is the Plaintiff's Director depones that the sum claimed was for the payment of Computer sold to the Defendants. He further explains how the Defendant paid some of the money leaving the balance of the amount, subject of this suit.

In the Defence, the 2nd Defendant denies that he was a guarantor to the 1st Defendant for the payment of the money and pleads that he is wrongly enjoined in the suit as a Defendant. I have studied the Agreement signed by the parties on 6th February, 1997 and its terms agree on what Plaintiff depones in his affidavit. There is no evidence that the Defendants complained about the goods sold to them.

In paragraph 5 of the agreement it is stated that Mr. Levi O. Obondo being the Director of Ideal Office Products Limited guarantees the payment of the purchase price within one month if the 1st Defendant does not pay. The Defence in paragraph 2 and 5 put the Plaintiff on strict proof of the claim. The strict proof is the agreement which was signed by the parties. There is no counter claim by the Defendant.

It follows therefore that the Defence does not raise any triable issues and the Plaintiff under these circumstances is entitled to a judgement. The Defence having been filed to simply delay the payment of the balance of the purchase money. The application is allowed. The Defence is struck out and judgement entered for the Plaintiff as prayed for in the plaint. The application shall have the cost of this application.

Delivered and dated this 19th day of March, 2001

KASANGA MULWA

JUDGE