

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 475 OF 1997

NATIONAL BANK OF KENYA LIMITED PLAINTIFF

VERSUS

RAJENDRA K. G. GANATRA T/A

SWEETBITE MANUFACTURERS DEFENDANT

JUDGMENT

The plaintiff is a limited liability company carrying on banking business in Kenya. The defendant is an individual carrying on business under the name and/or style of Sweetbite Manufacturers. He used to maintain an account No. 201-028-050 with the plaintiff at its Branch at Mombasa.

According to the plaintiff's claim, the defendant through the account mentioned above applied for and was granted certain banking facilities by way of a loan and/or an overdraft which the defendant has failed and/or neglected to repay despite several demands to do so. It is averred in the plaint that by reason of that failure the sum outstanding as at 13.2.1997 was Shs.9,847,326/20 with interest accruing thereon at the prevailing bank rate of 32% per annum from 27.2.1997 till payment in full.

The defendant filed a defence to the claim together with a counterclaim and set-off. He denied owing the sum claimed or any part thereof.

In the counter-claim and set-off, the defendant avers that he paid to the plaintiff a bankers cheque in the sum of Shs.1,000,000/= which apparently the plaintiff has not accounted for. The defendant therefore prays that the said sum of Shs.1,000,000/= together with interest accrued therein be set-off against the plaintiff's alleged claim.

The plaintiff did not attend the trial of the suit and no evidence whatsoever was tendered on his behalf. Consequently the counter-claim and set-off stood unproved and I dismiss it with costs.

With regard to the plaintiff's claim, evidence was tendered by Mark Mosei (PW1) who is the officer in charge of the Loans Department at the plaintiff's Nkrumah Road Branch, Mombasa. The evidence established that the defendant was the holder of a current account No. 201-028-050 at the Nkrumah Branch. The evidence further reveals that the plaintiff used to operate the account as a collecting account and in that respect he used to deposit cheque payments into and also draw cheques on the account. The witness further stated that sometimes there used to be sufficient funds to meet the cheques drawn on the account but at other times the funds were not sufficient. The witness said that even when there were no sufficient funds, the bank used to honour the cheques drawn on the account with the obvious result that the account would become overdrawn.

According to PW1, the plaintiff permitted the account to be overdrawn on the understanding that the defendant would subsequently deposit funds in the account to meet the overdrawn amounts. He tendered in evidence a bundle of 17 cheques drawn on the account by the defendant which when met had the effect of having the account overdrawn to the extent of Shs.5,275,822/50 as at 30.12.95. Out of that amount, the defendant paid a sum of Shs.1.1 million from a fixed deposit which he maintained at the bank and also made a cheque payment of another Shs.1 million. Apart from those two payments, there were no other receipts into the account.

PW1 also produced copies of monthly bank statements dispatched to the defendant which show the

entries made in the defendant's account. As to interest, the witness testified that it was computed on daily balances at various rates and posted to the account at the end of each month. He tendered in evidence a schedule showing the rates of interests charged on the account.

Though PW1 was subjected to thorough cross-examination by the defendant's learned counsel, Mr. Rommel Da Gama Rose, his evidence was not shaken. And because the defendant did not turn up at the hearing of this case to tell his version of the story, what PW1 stated stands unchallenged. The evidence which I accept as true, establishes, on a balance of probability, that the defendant is truly and justly indebted to the plaintiff in the sum claimed in the plaint. Accordingly, judgment is entered in favour of the plaintiff against the defendant as prayed in the plaint. The defendant will bear the costs of the suit and the counter-claim and set-off (which has already been dismissed).

Dated at Nairobi this 9th day of March, 2001.

T. MBALUTO

JUDGE