

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 2175 OF 2000

DR. OSITA OGBU PLAINTIFF
VERSUS
VIOLET GATEI DEFENDANT

RULING

The plaintiff has instituted this suit against the defendant to recover the sum of US Dollars 25,000 together with interest thereon which he says was agreed between the parties at US Dollars 7499 upto September, 2000.

The defendant admits owing the plaintiff US Dollars 25,000 but dispute the claim in respect of interest. By an application dated 7.3.2001, the plaintiff moved this court for summary judgment as prayed in the plaint. Since the claim for the principal sum is admitted, this ruling will be confined to the issue of interest.

In support of the application, the plaintiff has sworn an affidavit on 12.3.2001 annexed to which is a copy of an agreement which clearly shows that the defendant agreed to pay interest on the money advanced to her by the plaintiff at the rate of US Dollars 3,500 per month.

The defendant has not filed any replying affidavit to explain why she has declined to honour the agreement. Consequently, what the plaintiff states in his affidavit therefore stands uncontroverted. Given that position, the court must accept as true and correct the evidence contained in the plaintiff's affidavit. On the basis of that evidence, I find the plaintiff's claim inclusive of interest as claimed proved on a balance of probability.

Accordingly, judgment is entered in favour of the plaintiff against the defendant for the following sums:-

- (a) The principal sum of US Dollars 25,000.
- (b) Agreed interest in the sum of US Dollars 7,449.
- (c) Interest on (a) and (b) above at court rates from the date of filing suit until payment in full.
- (d) Costs of the suit together with interest thereon.

The defendant will bear the plaintiff's costs of this application.

Dated at Nairobi this 31st day of May, 2001.

T. MBALUTO
JUDGE