

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 3624 OF 1995

NATIONAL BANK OF KENYA.....PLAINTIFF
VERSUS
GEMMA GELMETTI & ANOTHER.....DEFENDANT

JUDGMENT

The Plaintiff's suit against the Defendant is in respect of written personal guarantees dated the 29 December 1996 in which they undertook payment jointly and severally of the indebtedness of Mbuta Limited of which they were both shareholders and directors. It is not denied that the company is indebted to the Plaintiff in the sum of Shs.34,290,846.25 as at the 1st September 1995 together with further interest thereon. When this matter came for summary judgment I allowed the Defendant to defend the suit on the basis that it appeared, at that time that, the land which was for security for the company's loan had not been sold and despite the appointment of a Receiver by one of the Company's Creditors a first and final dividend was paid rateably to all creditors including the Plaintiff despite the plaintiff having a debenture and priority charge over the company's assets.

When the matter came for hearing Mr. Otieno for the Plaintiff gave evidence of the loan and the guarantees signed by the Defendants which I accept as fully valid in respect of the debt of the company. He also stated that the plaintiff attempted to sell the property charged to it but as yet without success. With regard to the monies paid by the Receiver this was in respect of the sale of assets of the company which were not charged to the Plaintiff and thus the Defendants were not entitled to the benefit of the whole of these assets. And as such they have suffered no prejudice by the Plaintiff not recovering the full value thereof.

The Defendant did not appear to give evidence and in my view they have no valid defence to the suit. I therefore give judgment to the Plaintiff as prayed in the plaint against the Defendants jointly and severally.

Dated and delivered at Nairobi this 23rd day of May, 2001.

PHILIP J. RANSLEY
COMMISSIONER OF ASSIZE.