

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 4433 OF 1989**

**KENYA NATIONAL CAPITAL CORPORATION LTD. PLAINTIFF
VERSUS
CORNELIUS NYAMBOKI DEFENDANT**

JUDGMENT

The plaintiff's claim against the defendant as stated in the plaint is for Shs.615,218/80 plus interest thereon at 18% per annum from 30.6.1989 until payment in full. The claim arises from a lease hirer agreement between the plaintiff and the defendant pursuant to which the defendant was financed by the plaintiff to purchase an Izuzu Lorry (6x2) FTR 115 at a cost of Shs.827,000/=. The facility was repayable in 30 equal monthly instalments of Shs.34,365/=.

The suit came up for hearing before me on 9.5.2001 when Mr. Gesora for the defendant applied for adjournment purportedly because the defendant had not availed certain documents to his advocates. However when the application was rejected, it turned out that no witness was present to tender evidence on behalf of the defendant. In the event the evidence tendered on behalf of the plaintiff stands unchallenged.

That evidence tendered by John Karanu (PW1) shows that after the facility became operative, the defendant failed to service it properly and he soon fell into arrears. After due notice had been served upon him without eliciting any response, the motor vehicle the purchase of which had been financed by the plaintiff was repossessed and sold by auction in accordance with the terms and conditions of the lease hire agreement and after the proceeds of the sale had been credited to the defendant's account, the balance claimed in this suit remained to be paid. That is the subject of the suit. In term of the lease hire agreement, interest on the facility accrues at 18% per annum.

In view of the above, I am satisfied that the plaintiff has established its case on a balance of probability. Accordingly judgment is entered in favour of the plaintiff against the defendant for Shs.588,326/75 which the plaintiff now concedes was the balance outstanding as at 30.6.1989 plus interest thereon at 18% per annum from that date till payment in full. The defendant will bear the plaintiff's costs of this suit.

Dated at Nairobi this 18th day of May, 2001.

T. MBALUTO

JUDGE