

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO. 195 OF 2000

CO-OPERATIVE BANK OF KENYA LIMITED PLAINTIFF

VERSUS

JOHN MWENJA NGUMBA 1ST DEFENDANT

FARM FRESH COMMODITIES LIMITED 2ND DEFENDANT

RULING

This is an application for summary judgment against the 1st defendant under Order 35 Rule 1 of the Civil Procedure Rules. The application is based on the following grounds:-

- 1. That the defendants are jointly and severally truly and justly indebted to the plaintiff in the sum of Kshs.547,267.80 claimed in the plaint;***
- 2. That the defence filed by the 1 st defendant herein is a mere denial aimed at delaying the judgement hereof. It raises no triable issues. It should be struck off and judgement ente red for the plaintiff as prayed;***
- 3. That the liability of the defendants to the plaintiff is joint and several;***
- 4. That the 2 nd defendant has been placed under receivership and the plaintiff being an unsecured creditor, has no chance of recovering the money from it.***

The application is supported by an affidavit sworn on 11.4.2001 by Listone Mwamburi, the manager in charge of the Co-op Card Credit Centre. The affidavit reveals that the 1st defendant was issued with a Co-op Credit Card No. 4797 404 0000 2413 in respect of which the sum of Shs.547,267/80 was outstanding as at 24.6.1998. Having looked at the defence filed herein by the defendant, I am of the opinion that it does not answer the plaintiff's claim. In my judgment it is a sham which raises no triable issues and is only aimed at delaying the recovery of the debt.

On the basis of the evidence contained in the affidavit filed herein in support of the application together with the annexures thereto; I am satisfied that the 1st defendant is truly and justly indebted to the plaintiff in the sum of Shs.547,267/80 as at 24.6.1998. Accordingly, judgment is entered in favour of the plaintiff against the 1st defendant as prayed in the plaint.

Dated at Nairobi this 8th day of June, 2001.

T. MBALUTO

JUDGE