



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS  
CIVIL CASE NO. 908 OF 2000**

**TRUST BANK LIMITED ..... PLAINTIFF  
VERSUS  
NAIROBI ALARMS LIMITED ..... 1ST DEFENDANT  
FABOUK JAN MOHAMMED ..... 2ND DEFENDANT  
ZAYEEN JAN MOHAMMED ..... 3RD DEFENDANT**

**JUDGMENT**

This is a claim for Shs.4,733,110.10 with interest thereon at 28% per annum from 31.3.2000 until payment in full.

After the pleadings in the matter had been closed, the suit was fixed for hearing on 29.5.2001. However when the case was on that date called for hearing, only the plaintiff was present. On the application by the plaintiff's advocate, it was ordered that the hearing of the suit should proceed ex parte.

The evidence tendered by the plaintiff's witness, Mr. Philip Maritim (PW1) established that the 3 defendants in this suit were customers of the plaintiff, the 1st defendant being the holder of account number 5410-01 in the plaintiff bank and the 2nd and 3rd defendants being guarantors thereof. Through that account the 1st defendant obtained an overdraft and a loan account totalling Shs.4.6 million at interest rates of 32% p.a. on the overdraft and 36% p.m. on the loan. As security for the facilities, the 2nd and 3rd defendants signed personal guarantees in favour of the plaintiff. Further securities for the two facilities comprised Deposit Receipts Nos. 1592, 1554, 1546, 1602 and 1616 in the total sum of Shs.4,057,845/55.

PW1's further evidence was that the defendants did not service the overdraft and loan facilities as agreed and as at 30.3.2000, there was due and owing by the 3 defendants jointly and severally the sum of Shs.4,733,110/10, which is the amount claimed by the plaintiff against the 3 defendants in this suit. PW1 also stated that despite demand and intention to sue in default having been given, the 3 defendants failed and/or refused to repay the loan facilities.

On the basis of the evidence aforesaid, I am satisfied that the claim by the plaintiff against the defendants has been established on a balance of probabilities. Accordingly, judgment is entered in its favour against the defendants jointly and severally as prayed in the plaint with costs and interest.

**Dated at Nairobi this 6th day of June, 2001.**

**T. MBALUTO**

**JUDGE**