



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 995 OF 2000**

**KENYA PIPELINE COMPANY LTD. .... PLAINTIFF**

**VERSUS**

**NU-TECH SYSTEMS LTD. .... 1ST DEFENDANT**

**PATRICK INDA ..... 2ND DEFENDANT**

**KOMBE N. RANDU ..... 3RD DEFENDANT**

**PAUL INDA ..... 4TH DEFENDANT**

**JUDGMENT**

The plaintiff has filed this suit to recover the sum of Shs.4,736,000/= from the defendants which it claims is the balance outstanding in respect of an advance of Shs.9,472,000/= it made to the 1st defendant in connection with a tender for the supply of some 8 motor vehicles. The 2nd, 3rd and 4th defendants are directors of the 1st defendant and they have been joined in the suit on the basis of an agreement which the 3 of them signed personally acknowledging receipt of the sum of Shs.4,736,000/= from the plaintiff. By virtue of the agreement, the 3 defendants undertook, amongst other things, to deliver two remaining motor vehicles in respect of which they had received advance payment.

The defendants filed a joint defence in which the 1st defendant's failure to honour the contract is conceded, such failure being blamed on currency fluctuations. But as regards defendants No. 2, 3 and 4, while in the defence the 1st defendant's indebtedness is acknowledged, the 3 defendants deny having given any personal undertakings to pay the sums due from the 1st defendant to the plaintiff. At the same time it is averred that if any such undertaking as is pleaded by the plaintiff was given, then the same was obtained without consideration, under duress and is therefore not binding on the three defendants.

Although the hearing date was taken in court before the late Hon. Justice Hewett in the presence of learned counsel for both parties, neither the defendants' learned counsel nor any of his clients was present when the suit was called for hearing; in the event the hearing proceeded ex parte and the averments made by the defendants in their defence stood unsubstantiated.

Two witnesses namely Ernest Wachira Kinuthia (PW1) and Mary Kiptai (PW2) gave evidence on behalf of the plaintiff. On the basis of the unchallenged evidence of those two witnesses, I am satisfied that each of the four defendants herein is jointly and severally liable to the plaintiff in the sum of Shs.4,736,000/=.

Accordingly, judgment is entered in favour of the plaintiff against the defendants jointly and severally for Shs.4,736,000/= together with costs and interest.

Dated at Nairobi this 26th day of October, 2001.

**T. MBALUTO**

**JUDGE**