

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1197 OF 2001

UNITED INSURANCE COMPANY LTD. PLAINTIFF
VERSUS
SAMKA INSURANCE BROKERS LTD. DEFENDANT

R U L I N G

I have considered the application dated 24th August 2001. It is seeking summary judgment to be entered in favour of the Plaintiff against the Defendant in the sum of K.shs 6,154,250/- together with interest compounded monthly at the rate of 26% per annum from 30th October 2000 until payment in full together with costs. In the Affidavit in support of it, the Applicant states that the Defendant has admitted indebtedness and this is supported by a document annexed as Exh. KMI which is signed by both Defendant and Plaintiff and which clearly sets out not only that the debt is admitted but also the mode of repaying the same debt. This is not disputed by the Defendant who was served way back on 4th September 2001 but never filed any Replying Affidavit and never appeared in court for the hearing of this matter. There are also cheques written by the Defendant in favour of the Applicant which were post dated. Some had been dishonoured. These cheques were given as payments for the debt. This also has not been challenged. The effect of all these is that the denials by the Defendant contained in its Statement of Defence at paragraphs 3, 4, and 5 which are the main parts of the Defence cannot stand as these paragraphs of the Defence deny ever entering into any agreement with the Plaintiff for payment of the sums due to the Plaintiff and deny issuing cheques to the Plaintiff and states that Defendant is a stranger to allegations at paragraph 5 & 6 of the Plaintiff whereas by the facts above and the exhibits annexed which were not disputed, the Defendant entered into agreement accepting its indebtedness and issued cheques in an attempt to pay the debt.

I am satisfied that no bonafide triable issues are raised by the Defence herein and this is a plain and obvious case where a summary judgment under Order 35 Rules 1 & 2 can be entered and I do enter the same judgment. Defence is struck out.

Judgement is hereby entered in favour of the Plaintiff against the Defendant for the sum of K.shs 6,154,250 with interest on the same amount at 26% per annum from 30.10.2000 till payment in full. Costs of the suit and costs of this application to the Plaintiff/Applicant. Orders accordingly.

Dated at Nairobi this 22nd day of October 2001.

ONYANGO OTIENO

JUDGE