

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 490 OF 2001

IRON AFRICA LIMITED PLAINTIFF
VERSUS
STELL TUBES & PIPES LIMITED DEFENDANT

RULING

This is an application for judgment to be entered against the defendant on the ground that the defendant has admitted the claim and that the defence filed by it herein is a mere denial which raises no triable issues.

The application is supported by an affidavit sworn on 7.9.2001 by Hasmukh Kanji Patel a director of the plaintiff company which shows that the claim by the plaintiff against the defendant arises from goods said to have been sold by the plaintiff to the defendant. The same affidavit further reveals that when payment for the goods was not forthcoming, the plaintiff's advocates demanded payment of the amount due being Shs.1,586,735.50, to which demand the defendant responded as follows:-

“We have received your letter dated 4 th February, 2000 on 9 th February, 2000. You can understand that at present the Economy of the Country is not very well & also our factory was closed for Two Months and such we are facing big Cash -flow problem. We are going to start the factory after 22 nd February, 00 and we think we shall try and manage to pay you Kshs.200,000/= (Kshs. Two Hundred Thousand only) per month. We hope your client will accept the proposal.”

In my view the above letter constitutes a clear and unequivocal admission of the debt by the defendant and consequently, the defendant's defence is an obvious sham. Consequently, the application is allowed and judgment entered in favour of the plaintiff against the defendant as prayed in the plaint. The defendant will bear the plaintiff's costs of the suit.

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

T. MBALUTO
JUDGE