

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI(MILIMANI COMMERCIAL COURTS)

CIV CASE 901 OF 94

NATIONWIDE FINANCE COMPANY LIMITED V EUGENIA WANJIJU WARIITHI

T MBALUTO, J

MARCH 21, 2000.

RULING

This is an application for summary judgment under O. XXXV rule 1 of the Civil Procedure Rules. The application is supported by an affidavit sworn on September 21, 1999 by Julius Mwaniki Gikonyo, an officer in the advances department of Consolidated Bank Finance Limited, which owns the plaintiff.

The plaintiff's claim against the defendant arises from a loan advanced to the defendant which together with interest accrued thereon as well as other charges said to have been incurred by the plaintiff in connection with the loan and for which the defendant is said to be liable amounted to Kshs 1,198,918.70 as at January 31, 1994 roughly a month before the suit was filed.

The defendant's defence to the claim was a general denial. She denied having entered into any contract with the plaintiff or having been advanced any money by the plaintiff. However, annexed to Mr. Gikonyo's affidavit are two letters written by the defendant on July 5, 1984 and May 9, 1989 in which the defendant not only acknowledges having received the loan, but through which she made proposals regarding repayment of the loan. In view of this, the defendant cannot be heard to say that she did not receive the loan.

Also given the fact that the defendant did not, in the two letters complain of any irregular charges, the claim in her grounds of opposition that the accounts are inaccurate and that some of the money now being claimed was never drawn is clearly an afterthought. The complaints about alleged exorbitant and arbitrary charges are also inconsistent with the defence put forward by the defendant. The complaints are unsubstantiated and lack substance. Similarly, the claim that the suit is time barred has no merit. I say so because I notice that the suit was filed within 6 years after the defendant had acknowledged the loan vide her letter dated May 9, 1989.

For the above reasons, I am satisfied that the defendant is truly and justly indebted to the plaintiff in the sum claimed in the plaint and that her defence is a mere sham which raises no triable issue fit to go for trial. Accordingly, I allow the application and enter judgment in favour of the plaintiff against the defendant as prayed in the plaint. The defendant will bear the plaintiff's costs of this suit.