



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**civ suit 1025 of 99**

**GIRO COMMERCIAL BANK LIMITED.....PLAINTIFF/APPLICANT**

**-VERSUS**

**WASEEM ALTAF KHAWAJA.....DEFENDANT/RESPONDENT**

**JUDGMENT**

The Plaintiff is asking for a Summary Judgement following the suit filed on 4.8.99 in which the Plaintiff is asking for a Judgement together with interest and costs as contained in paragraph 9 of the plaint. The Defendant filed a defence and counter claim and a set off. In the present application the plaintiff is urging the Court to grant the application on the grounds that the defence filed is no defence at all to the claim and the counter claim and set off are sham as the plaintiff did not owe the defendant any money. In support of its claim the plaintiff has explained through the affidavit of Mr. Sastry, the Chief Manager, how the defendant was advanced the sum of shs.3.5 million. On failure to repay the whole amount the Plaintiff realised the security which was a motor vehicle. The present suit is for the balance. The defence alleges that the sale of the vehicle was fraudulent as the vehicle was sold far below its value. The defendant in the counter claim and set off is asking for the balance of what he claims to have been the value of the vehicle and what the sale actually fetched.

The defendant has not denied that he was advanced the money claimed by the plaintiff. The defence dwells on the undervaluation of the vehicle later sold and the unconscionable interest charged. In the counter claim he refers to a waiver of the interest referring to a letter dated 1.5.99 from the Managing Director of the Bank.

These claims put up by the Defendant do not amount to a defence to the claim raised by the Plaintiff. The Defendant does not deny that the Defendant had the right to sell the vehicle, but only questions the value given to the vehicle in which case he can pursue the issue separately of this suit. The counter claim can not stand as it is based on the claim of undervaluation. Other than this claim which as I have said can be pursued separately the plaintiff does not owe the defendant any money which can be counter claimed and used as a set off. The defence as it stands together with the counter claim and the set off do not raise any triable issues.

The application is allowed as prayed for in prayers 1 and 2 of the Notice of Motion.

**Dated this 3rd day of April, 2000.**

**KASANGA MULWA**

**JUDGE**