



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 1254 OF 1999.

**RELIANCE BANK LIMITED.....PLAINTIFF**

**VERSUS**

**CAMPOS INDUSTRIES LIMITED.....DEFENDANT**

**J U D G M E N T**

This matter came for hearing on the 3.5.2000 when in the absence of the Defendant or its Advocate the matter proceeded exparte.

An application was made to set aside the judgment to which I partially acceded by allowing the Defendant to prove its allegation that interest on Bearer Certificate Deposits had not been taken into account. The matter came before me again on the 18 May 2000 when the Defendants Director Ratilal Gora Sumaria gave evidence and produced his reconciliation account Exh. A which showed an amount of Shs.2,583,228.74 as being due as at the 3.4.2000.

The Statement sought credits for interest on the Bearer Certificates in a sum of Shs.38,832.62, a sum of Shs.1,500,000 being the value of the certificates, a sum of Shs.1,065,191.75 with interest thereon of Shs.3,035,07. The Defendant calculated interest on the statement at the rate of 21% per annum. The rate agreed by the parties but on an annual basis and not on monthly balances.

The Plaintiff is under statutory management by the Central Bank of Kenya. D.W. 1 produced a statement Exh. 23, showing the balance as at 28.4.2000. This he produced under the provisions of Sec.176 of the Evidence Act and was not challenged by the Defendant.

P.W. 1 gave evidence that the Bank is under a moratorium and as such under Section 34 of the Banking Act which has to be applied without preferential treatment to the customers. The position with regard to the Bearer Certificates is that no interest is payable on them and that interest is not paid on them either. The Defendant was however given the chance to deposit his Bearer Certificate with the Bank which would have a lien over it and as a result interest to the extent due on the certificate would not be charged as the overdrawn account.

I hold that the Defendant is not entitled to the credit for Shs.1.5million claimed by him and the interest due thereon.

With regard to the sum of Shs.1,065,191.62 this arose as a result of a deposit of Shs.1million owned by a Mr. Ammvid Hirji Hiram and another being uplifted by Mr. Hirji and his co-owners what had been encashed before the Bank went into statutory receivership and the cheque was not honoured. The cheque

was payable to Fortune Finance Limited for the Defendant. It appears Mr. Hiram and his co-owner owed money to the Defendant and this is why the Defendant claim it is entitled to the money.

This fact however was not brought to the attention of the Bank. In the event I see no reason why the Defendant should have a credit for the sum of Shs.1m. and interest thereon which ostensibly belongs to Mr. Hiram and his co-owner. If money is due to the Defendant from Mr. Hiram and his coowner there is nothing stopping the Defendant claiming the same from them.

With regard to the interest at 21% I accept that the same is calculated with monthly rests and not yearly.

I accept the statement Exh. 23 as correct and therefore award judgment to the Plaintiff for the sum claimed in the plaint with costs and interest thereon as claimed.

The Defendant asked for the sum due to be paid by installments of Shs.200,000/- per month. I will hear arguments on this on a date to be fixed.

Dated and delivered at Nairobi this 25th day of May, 2000.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.