



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL CASE 1846 OF 99**

**MOTICHAND VIRPUR SHAH & ANOTHER.....PLAINTIFF**

**V**

**SATISH SHAH.....DEFENDANT**

**RULING**

The plaintiff has brought this application by way of Notice of Motion under Order XXXV rule 1 (a) and (3), Order XII rule 6 and Order L rule 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for summary judgment against the defendant for Kshs 800,000 which is the amount claimed in the plaint, together with costs and interest. The application is founded on the ground that the defendant has by his pleadings admitted owing the said sum of money.

Although the defendant has filed what purports to be a defence and counter claim, the document is a sham solely intended to delay the plaintiff in the recovery of the sum of Kshs 800,000. I say so because in paragraph 3 of the same document the defendant admits having received the said sum of money for the plaintiff while in paragraph 8, he acknowledges his obligation to repay the money in full. As for the counter claim it discloses no cause of action.

For the above reasons, I am satisfied that the defendant has no reasonable defence to the plaintiff's claim as what he has put forward as a defence is clearly a sham. Accordingly, the application is allowed and judgment entered in favour of the plaintiff against the defendant for Kshs 800,000 together with costs and interest. The defendant will bear the costs of this application.