

**Summary judgement
Order 35 r 1 CPR
Order 6 r13(b) (c) & (d)
Order 12 r 6 CPR**

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
MILIMANI LAW COURTS**

CIVIL CASE NO. 1232 OF 1998

CORPORATE INSURANCE CO. LTD. PLAINTIFF

VERSUS

TRADE INSURANCE BR OKERS LTD. DEFENDANT

JUDGEMENT

The Plaintiff is a licensed corporate body dealing with insurance business. The defendant is a corporate body dealing with insurance business as agent and broker.

The plaintiff sued the defendant for failing to remit insurance premium collected on their behalf amounting to Ksh.1.964,574/-. The defendant did not dispute owing the insurance premium to the plaintiff but states that the plaintiff owned them money for credits due to them.

Indeed they the defendants proved themselves right when the plaintiffs, after reconciling their accounts came up with the figure of Ksh.803,377/- as due and owing. In their defence the defendants alleged there was no agreement between the parties. That it is true they collected premium on behalf of the plaintiffs but the actual amount due to the plaintiffs was dependant on the several credits yet to be accounted for towards them by the plaintiff. That the figure of Ksh.1.964,574/- should reduce to Ksh.1.516,260/-. No counter claim was filed or pleaded with the defence.

The plaintiff at once filed an application on summary judgement. They were able to demonstrate that the defendants were officially appointed as agents through an agreement marked "FNG1".

That the defendants have made payment proposals any settlement was not always honoured.

In reply, the defendants stated the agreement was entered into by one "Professional Business Services Ltd." who in fact are not the defendants. That the correct statement of accounts is Ksh.762,515/-. That any moneys due and owing had been paid by cash or other cheques. Any amount due should be off set by commission due to them.

The advocate for the plaintiffs stated that what the defendants sort was accounts. They showed no proof of the payment of cash or cheques to replace the dishonoured cheque. The plaintiffs have since done their reconciliation and are satisfied the figures now are to them as Ksh.803,377/- as prayed.

The defendants claim there are triable issues.

I hold that the defendants do not deny owing the plaintiffs premiums due. I believe their submission.

I hereby allow this application for summary judgement of Ksh.803,377/- as prayed.

The defendants had not filed a counter-claim. They are free to file fresh suit to claim their premiums “no claim” discounts cancelled comes against the plaintiff, if any.

I award costs of this application to the plaintiff.

Dated this 14th day of July, 2000 at Nairobi.

M.A. ANG’AWA

JUDGE