

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 1978 OF 1997

**Southern Credit Banking Corp Limited v Shah MOTORS LIMITED & 3
Others**

High Court Of Kenya At Nairobi
August 25, 2000.

Milimani Commercial Courts
T Mbaluto, Judge

Civil Suit No. 1978 Of 1997
August 25, 2000 T Mbaluto Judge delivered the following judgment.

The plaintiff is a limited liability company carrying on banking business at Nairobi. Its claim against the defendants is for Kshs 6,000,000 arising out of a promissory note issued by the 4th defendant which said note the plaintiff discounted. The bill became due for payment on July 1, 1997 but the same remains unpaid up to date. According to the plaintiff, the amount continues to attract interest at the rate of 4% per month on a compound basis until payment in full.

The 4th defendant claims that it has no knowledge of the averments made in paragraph 3 of the plaint and more particularly denies that the promissory note was signed under the stamp of the 4th defendant or that the signatory had authority of the 4th defendant to issue it. In the alternative the 4th defendant avers that, if the note was given at all, then there was a total failure of consideration in respect thereof. Regarding the issuance of the note, I think it is more than clear that the 4th defendant's denial lacks credibility. I say so because, the note the subject of the suit is not the only one the 4th defendant issued to Shah Motors Limited and which was discounted by the plaintiff.

On August 27, 1996, the 4th defendant issued a promissory note for Kshs 6,000,000. That note was discounted by the plaintiff and subsequently honoured by the 4th defendant. Similarly another note dated December 30, 1996 for Kshs 6,000,000 was honoured. In my view, the signature on note No. 4 is similar to that note No. 2, which is the subject matter of this suit. Given those facts, I am of the opinion that the 4th defendant's witness was being less than truthful in denying the making or genuineness of the note. Apart from the foregoing, the 4th defendant's defence to the suit, as will appear in the written statement of defence is that the signatory had no authority to sign the bill.

The evidence on behalf of the plaintiff was tendered by Vishvesh Dhivajlal Shah who is the plaintiff's Branch Manager at Westlands while that for the defendant was tendered by Hassanal Kamal Mithwani. This gentleman Mr. Mithwani is clearly an untruthful witness. At one stage he testified that the 4th defendant did not exist while at another he conceded that he was a director of the 4th defendant. He also stated that he did not know whether he was a shareholder of the 4th defendant while at the same time maintaining that he used to be a director of the 4th defendant in which capacity he also used to manage the company.

He further claimed that as a manager he sold the 4th defendant's machinery and other miscellaneous items to pay himself his salary (which allegedly was two months in arrears) as well as wages for the 4th defendant's workers. As will be seen from the foregoing, Mr. Mithwani is not a witness whose evidence can be relied on. In any case, the evidence is clearly a pack of confused self-serving statements some of which is obviously untruthful. I would place no credence at all to what he said. With regard to the defence

alleging lack of consideration, it would appear that the 4th defendant has overlooked the provisions of section 30(1) of the Bills of Exchange Act which enacts:-

“Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.” The section shifts the burden of proof to the 4th defendant to show that there was no consideration. In my judgment no evidence whatsoever has been tendered to establish lack of consideration. Accordingly the 4th defendant’s contention to that effect is rejected.

On behalf of the plaintiff, evidence was tendered, which includes the promissory note itself as well as statements of the relevant account, showing that the sum claimed in the plaint is truly and justly due to the plaintiff from the 4th defendant on account of the promissory note dated July 7, 1997 issued by the 4th defendant and discounted by the plaintiff. Given that position, I find that the 4th defendant is liable to the plaintiff in the sums claimed in the plaint and accordingly I enter judgment in favour of the plaintiff against the 4th defendant as prayed in the plaint with costs and interest.