

REPUBLIC OF KENYA

RAJAY SINGH & ANOTHER VRAVI AMIN
High Court Of Kenya At Nairobi August 7, 2000.
Milimani Commercial Courts
T Mbaluto, Judge
Civil Case No. 1178 Of 1999

August 7, 2000 T Mbaluto, Judge delivered the following judgment

This is an application for summary judgment under Order 35 of the Civil Procedure Rules. It is supported by an affidavit sworn on February 21, 2000 by Rajay Singh the 1st plaintiff who is also a director of the 2nd plaintiff. The affidavit clearly shows that the defendant requested for and was granted a loan by the 2nd plaintiff in the sum of Kshs 1.5 million. Payment was vide a cheque No. CA 128355 from Account No. 103-17345-01 drawn on Standard Chartered Bank. That cheque was presented for payment and duly honoured through special clearance. Receipt of the money is in fact acknowledged but the defendant who however purports to deny the claim by stating that the cheque is deemed to have been given for good consideration.

I do not understand what that means and anyway, I do not think it is either a reasonable or good defence in the circumstances. In a further attempts to explain the matter, the defendant has tendered as evidence an unsigned letter which is clearly a fake. In the case of Magunga General Stores v Pepco Distrib utors Limited , (Court of Appeal, Civil Appeal No. 24 of 1986) the Court of Appeal stated:- “A mere denial is not a sufficient defence and a defendant has to show either by affidavit, oral evidence, or otherwise, that there is a good defence.”

In this case the defendant has not shown by any type of evidence that there is a good defence. In my view what the defendant has presented as a defence is a mere sham solely intended to delay the plaintiffs in the recovery of the debt. Accordingly, I enter summary judgment for the plaintiff against the defendant for Shs.1.5 million together with costs and interest. The claim in respect of the balance i.e. Kshs 250,000 will proceed to trial. Costs of the application to the plaintiff.