



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIV CASE 863 OF 1999**

**KENYA COMMERCIAL FINANCE CO LTD**

**VERSUS**

**EZEKIEL KOSGEI ARAP KESENDANY**

**High Court of Kenya at Nairobi October 23, 2000**

**Milimani Commercial Courts**

**T Mbaluto, Judge**

**Civil Case No 863 of 1999**

**RULING**

October 23, 2000 T Mbaluto, Judge delivered the following ruling. This is an application for summary judgment under Order XXXV Rule 1 of the Civil Procedure Rules. The application is based on the ground that the defence filed by the defendant is frivolous, vexatious and otherwise an abuse of the courts process. It is also claimed by the plaintiff that the defence does not disclose any reasonable grounds of defence or raise any triable issues. The defendant who appeared in person did not deny the debt. He said that he borrowed the money from the plaintiff the subject matter of the suit to purchase some machinery for saw milling but only two weeks after buying the machine, the Government banned saw milling and his business collapsed. Attempts by the plaintiff to sell the securities held in respect of the loan proved unsuccessful.

The plaintiff's failure to realise its security by sale of the charged property does not of course release the defendant from its obligations. He remains liable to repay the loan. Accordingly, I can see no basis for resisting the claim. The application is allowed and judgment entered in favour of the plaintiff against the defendant as prayed in the plaint. The defendant will bear the plaintiff's costs of this application.

Delivered on October 23, 2000

**T Mbaluto, Judge**