



**HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**CIV CASE 1970 OF 1999**

**KENYA NATIONAL CAPITAL CORPORATION LTD**

**VERSUS**

**MARGARET WAIRIMU KABINU**

**RULING**

This is an application for summary judgment under Order 35 rule 1 of the Civil Procedure Rules. It is supported by an affidavit sworn by Mrs Z K Mogaka who is the Legal Services Manager of the National Bank of Kenya Limited, the applicant in this matter.

The affidavit reveals that on diverse dates between 1985 and 1986 the plaintiff at the request of the defendant advanced to the defendant financial accommodation by way of short term and long term loans amounting to Kshs 821,614 as at March 30, 1987. It is further revealed by the affidavit that a further short term loan of Kshs 327,000 was advanced by the plaintiff to the defendant on February 23, 1990.

The plaintiff claims that the defendant has failed and or neglected to service the loans advanced to her and that the balance outstanding on the various loans so advanced together with interest accrued therein as at June 1, 1999 was Kshs.6,308,883.60.

The defendant has filed a defence denying the indebtedness and averring that the loan advanced to her by the plaintiff has been repaid. There are other averments in the defence which in my view are irrelevant and of no consequence. Although the application was served upon the defendant's advocates on record Mr S Mauncho, no replying affidavit has been filed to controvert the evidence contained in the affidavit in support of the application.

Consequently, what Mrs Mogaka states stands unchallenged. Further more, neither the defendant nor her advocate attended court at the hearing of the application and the matter proceeded ex parte .

On the basis of the evidence contained in the affidavit in support of the application, I am satisfied that the defendant is truly and justly indebted to the plaintiff and that the defence filed herein is a sham which raises no triable issue. Accordingly, I allow the application and enter judgment 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 2, 2000**

**T Mbaluto, Judge**