

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA
CIVIL SUIT NO. 254 OF 1999

SOUTHERN CREDIT BANKING CORPORATION LTD. PLAINTIFF
VERSUS
MUTOMO HARDWARE GENERAL STORES LTD. DEFENDANT

RULING

There is no doubt that there is a claim for over 5 million shillings arising from a contract of Hire Purchase. The difference between the parties is on the amount due as the Defendant Claims the lorry the subject matter of the Hire purchase was sold but proceed never credited to their account while the Plaintiffs seek to prove otherwise. That is an issue of fact which may need to be resolved in evidence. As away of pleading, the defence has not ventilated much but at this stage the Respondent need only to show that he has a reasonable defence that merits court's consideration. This is to be viewed against the background of the principle that whenever there is a triable issue, be it of law or facts Defendant ought to have liberty to be heard. The court also may give a conditional right to defence if there is a doubtful defence of a kind a shadowy\y defence. I have considered all this. I think I am persuaded to think there is issue of fact that need to go to trial. I dismiss the applicant.

Cost in the cause.

Dated this 14th Day of December, 2000.

A.I. HAYANGA

JUDGE