



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS  
CIVIL CASE NO. 686 OF 1998.

VIMAL V. RADIA & 3 OTHERS.....PLAINTIFF

VERSUS

CITY FINANCE BANK LTD.....DEFENDANT

J U D G M E N T

The Plaintiffs claim a total of Shs.17,519,353.20 together with interest thereon at 2.5% per cent per annum and costs in respect of monies deposited with the Defendant in respect of which fixed deposit notes were issued as set out in the Plaintiff.

There is no dispute that these monies were deposited and that in the normal course of event those sums together with interest thereon would have been repaid to the Plaintiff.

The Defendant Bank was put into statutory Management by the Central Bank of Kenya on the 9.11.98 in accordance with the letter written by the Central Bank to the Defendant (number 57 in the Defendant's Bundle) and Elija Siror who was appointed the Manager as appears from document No. 58 in the Bundle in pursuance of Section 34(b) of the Banking Act applied a moratorium in respect of its depositors and other creditors as set out therein.

In pursuance of an Extra ordinary general meeting of the Defendant held on the 6.1.2000 the Defendant filed a Petition under section 207 of the Companies Act seeking this court's sanction to a scheme of arrangement whereby ordinary shares in the Defendant would be issued to creditors of the Defendant to rank pari passu with the existing ordinary shares of the company in respect of the sums due by the by the Defendant to the Creditors. The details of the scheme are set out at page 6 to 43 of the Bundle.

On the 27.1.2000 this court ordered the convening of a meeting of the creditors pursuant to section 207(1) of the Companies Act.

A meeting was duly commenced on the 14.2.2000 and on the 1 March 2000 in Misc. App.35 of 2000. This court sanctioned the scheme of Applicant as a majority in number representing three fourths in value of the creditors or class of creditors or classes of members, as required by Section 207(2) of the Company's Act were present and voted for the scheme of arrangement to be approved. In accordance with this section the section became binding on all of the creditors of the Defendant. The order made by this court was duly registered in the Registrar of Companies as required by Section 207(3) of the Companies Act.

The Plaintiffs submitted that as the scheme provided for a sum of shs.120million to be set aside for Deposit liabilities in court due for at off the scheme did not apply to them.

P.W. 2 for the Plaintiffs Mr. Mayor Patel gave evidence that this sum of Shs.120m. was a contingency in the event that a court should order that in respect of any creditor who was also a debtor to the Defendant any sum held by the debtor in a deposit account with the Bank should be set off the sum so set off would be taken from such sum. The sum of Shs.120million was not deposited by any cash and was merely a book entry.

I am of the view that no such debt can infact be set off against any deposit in view of the provisions in this Companies Act which inhibits preferences between creditors but leaving that aside the Plaintiffs in

the case are not debtors of the Defendant and therefore the question of setting off the deposits against such debts does not arise.

The sum is not as claimed by the Plaintiff to be used for the benefit and they are issued as all other creditors are by the scheme of arrangement.

The Plaintiff have no preferential rights to receive their deposits back and I therefore dismiss their plaint with costs to the Defendant.

Dated and delivered at Nairobi this 7th day of December, 2000.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.