



**Sara (London) Limited & another v Dodha (Civil Suit E964 of 2021)
[2025] KEHC 4669 (KLR) (Commercial and Tax) (10 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E964 OF 2021
PM MULWA, J
APRIL 10, 2025**

BETWEEN

SARA (LONDON) LIMITED 1ST PLAINTIFF

SOMOCHEM (KENYA) LIMITED 2ND PLAINTIFF

AND

UMESH HARAKCHAND DODHA DEFENDANT

JUDGMENT

1. The Plaintiffs filed a plaint dated 9th December 2021, seeking judgment against the Defendant for the sum of USD 778,418.76, together with interest and costs until payment in full.
2. The 1st Plaintiff is a limited liability company duly incorporated and registered in London, England, and operates as an international trader in plastic raw materials. The 2nd Plaintiff is an affiliate of the 1st Plaintiff, duly incorporated and registered in Kenya, and is engaged in the supply of chemicals.
3. In the plaint, the Plaintiffs aver that the Defendant, together with the late Mahesh Harakhand Dodhia (deceased), while acting as directors of Hi-plast Limited (hereinafter “the Principal Debtor”), executed an irrevocable personal guarantee dated 25th July 2013 in favour of the Plaintiffs. By that guarantee, they undertook to promptly make payment for various goods supplied by the Plaintiffs to the Principal Debtor on credit. Relying on the said guarantee, the 2nd Plaintiff supplied goods on credit to Hi-plast Limited between March 2017 and October 2017. The Principal Debtor defaulted in payment, resulting in an outstanding debt of USD 778,418.76 plus interest. The indebtedness is acknowledged by the Principal Debtor through a letter dated 2nd March 2018.
4. In response, and while expressly admitting the debt, the Defendant filed a statement of defence dated 3rd March 2022. He avers that the Plaintiffs had instituted insolvency proceedings against Hi-plast



Limited, which are pending before the Court, and contended that this suit should therefore be stayed pending determination of the said proceedings.

5. On 9th May 2024, when the matter came up for hearing, the Defendant sought and was granted an adjournment. The Court, however, condemned the Defendant to pay costs for both counsels and the Plaintiffs' witness, to be settled before the next hearing date. On 7th November 2024, when the matter came up again for hearing, the Defendant had failed to pay the said costs and chose not to participate in the proceedings.
6. The Plaintiffs called one witness, Mr. Hemang Kanubhai Desai (Pw1), the Manager of the 2nd Plaintiff. He adopted his witness statement and the Plaintiffs' bundle of documents, both dated 9th December 2021, as well as the supplementary documents dated 15th November 2023. He reiterated the averments set out in the plaint and thereafter the Plaintiffs closed their case.
7. The Plaintiffs subsequently filed their written submissions.

Analysis and determination

8. The following issues arise for determination by the court.
 - a. Whether the Defendant is liable to the Plaintiffs on the basis of a personal guarantee;
 - b. Whether the sum of USD 778,418.76 is due and payable by the Defendant; and
 - c. Whether the pending insolvency proceedings against Hi-plast Limited bar the present suit.
9. From the pleadings and the testimony presented, it is not in dispute that the Defendant, together with the late Mahesh Harakhand Dodhia, executed a personal guarantee dated 25th July 2013 in favour of the Plaintiffs. The guarantee was intended to ensure payment for goods supplied on credit by the Plaintiffs to Hi-plast Limited.
10. The existence and validity of the said personal guarantee have not been contested by the Defendant. Indeed, in his statement of defence dated 3rd March 2022, the Defendant expressly admits the debt, thereby confirming the existence of the underlying obligation. The sole issue raised by the Defendant is that Hi-plast Limited is subject to ongoing insolvency proceedings.
11. It is a well-established principle that the role of the Court is to enforce and give effect to the intention of the parties as expressed in their agreement and not rewrite contracts for them. The Court of Appeal underscored this in *National Bank of Kenya Limited v Hamida Bana & 103 Others* [2017] eKLR and *National Bank of Kenya v Pipeplastic Samkolit (K) Limited*, Civil Appeal No. 95 of 1999.
12. A personal guarantee becomes enforceable immediately upon default by the principal debtor, provided the terms of the guarantee have been satisfied. The guarantor's liability is triggered immediately upon such default, and the creditor is entitled to proceed against the guarantor without first pursuing the principal debtor.
13. Section 3 of the *Law of Contract Act* (Cap. 23, Laws of Kenya) provides that a contract of guarantee must be in writing and signed by the party to be charged. The Plaintiffs have met this legal requirement, having produced a duly executed written guarantee. The pendency of insolvency proceedings against the principal debtor does not preclude the Plaintiffs from enforcing the guarantee.
14. The Defendant's contention that the present suit should be stayed due to the ongoing insolvency proceedings against Hi-plast Limited is not supported by law. A guarantor cannot evade liability solely on the basis that insolvency proceedings have been instituted against the principal debtor. The two are



separate and independent causes of action. The claim herein is not against Hi-plast Limited but against the Defendant in his capacity as a guarantor. A guarantee constitutes an independent contract, and any proceedings against the principal debtor do not extinguish or stay the liability of the guarantor.

15. I am persuaded that the insolvency proceedings instituted against Hi-plast Limited do not operate as a bar to the present suit against the Defendant in his personal capacity as guarantor.
16. The Defendant did not challenge the authenticity of the documents produced by the Plaintiffs, nor did he present himself for cross-examination. Having been granted an adjournment on 9th May 2024 and condemned to pay costs, the Defendant failed to comply with that order and thereafter chose not to participate in the proceedings when the matter came up on 7th November 2024. This conduct is evasive and dilatory, intended to frustrate the course of justice. Accordingly, the Court must treat the Plaintiffs' evidence as uncontroverted and uncontested.
17. In *Peter Ngigi & Another (suing as legal representative of the Estate of Joan Wambui Ngigi) v Thomas Ondiki Oduor & Another* 2019 eKLR the court stated:

“22. There are many authorities that deal with the question of uncontroverted evidence, such as the situation in the present case where the defence did not show up at the trial. The general position running through such authorities is that uncontroverted evidence bears a lot of weight and a statement of defence without any evidence to support the assertions therein will amount to mere statements.”

18. In the circumstances, I find that the Plaintiffs, through the evidence of Pw1 and the bundle of documents produced in court, have proved their claim against the Defendant on a balance of probabilities, having adduced credible and unchallenged evidence.
19. Having considered the pleadings, the evidence on record, the Defendant's admission and the applicable legal principles, I find and hold that the Defendant is jointly and severally liable with the late Mahesh Harakhand Dodhia as guarantor for the sum of USD 778,418.76 owed by Hi-plast Limited to the Plaintiffs.
20. The upshot is that judgment is entered in favour of the Plaintiffs against the Defendant for:
 - a. The sum of USD 778,418.76
 - b. Interest shall accrue on the said sum at court rates from the date of filing suit (9th December 2021) until payment in full.
 - c. The Defendant shall bear the costs of this suit.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Natalie Obago h/b for Mr. Mbaluto for Plaintiffs

N/A for Defendant

Court Assistant: Kadzo

