



**MP Africa Limited v Mafafrique Holdings Limited (Civil Suit E049 of 2023)  
[2024] KEHC 13961 (KLR) (Commercial and Tax) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13961 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E049 OF 2023  
FG MUGAMBI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**MP AFRICA LIMITED ..... PLAINTIFF**

**AND**

**MAFAFRIQUE HOLDINGS LIMITED ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff instituted this suit by a plaint dated 3/4/2022, arising from two loan agreements with the defendant, dated 25/4/2019 and 3/6/2019. The plaintiff asserts that the total loan amount was 600,000 Euros, disbursed in two equal installments of 300,000 Euros each. The plaintiff further states that the loans, being on a soft loan basis, did not accrue interest, although there was a penalty for late repayment.
2. In connection with the said loans, the defendant executed corporate guarantees dated 25/4/2019 and 1/6/2019 in the plaintiff's favor for the sum of 600,000 Euros. The plaintiff asserts that the defendant failed to repay the amounts advanced, leading to the present suit.
3. The plaintiff prays for judgment against the defendant and for the following orders:
  - a. A declaration that the defendant breached the terms of the loan agreement;
  - b. An order directing the defendant to repay the loan of six hundred thousand euros;
  - c. Interest accrued on the first and second facilities each at the rate of 1% per day from the dates of the agreement till payment in full;
  - d. Cost of this suit;
  - e. Interest on (a), [b] and (c) above until date of repayment of loan; and



- f. Any other relief that this honourable court may deem fit and just to grant.
4. Judgment in default was entered on 25/8/2023 and prayers (b), (c), (d) and (e) were granted. The matter proceeded to a formal proof hearing on the basis of prayer (a) before this court on 19/3/2023. The plaintiff called one witness, Askar Karimulin, a director of the plaintiff company, whose testimony aligns with his witness statement and bundle of documents. There was no appearance by the defendants at the formal proof hearing. The plaintiff filed written submissions dated 2/5/2024 which I have duly considered, alongside the evidence and authorities cited by the plaintiff.

### **Analysis and Determination**

5. The basis of a formal proof hearing was laid down in the case of *Peri Formwork Scaffolding V White Lotus Projects Limited*, [2021] eKLR. The Court held as follows:

“In a formal proof hearing, a party with the onus of adducing evidence must produce such sufficient evidence which must satisfy the court as to its truth.”

6. In this case, the plaintiff bears the obligation to provide evidence proving that the defendant breached the terms of the loan agreements. The key question is whether the plaintiff has met the required standard of proof. On pages 11 through 15 of the plaintiff's documents is a loan agreement for the sum of 300,000 Euros, executed on 25<sup>th</sup> April 2019. A second agreement, dated and executed on 1<sup>st</sup> June 2019, for a similar amount, is found on pages 16 and 17 of the plaintiff's documents. Both agreements were executed by the plaintiff and the defendant.
7. The plaintiff submitted, on pages 18 and 19 of its bundle of documents, a demand letter addressed to the defendant's parent company requesting payment. Another demand letter from Metropol Holdings Kenya, acting on the plaintiff's instructions, was included on page 20 of the bundle. A third demand letter is annexed on pages 21 and 22. There is no response from the defendants on the record.
8. An analysis of the aforementioned documents supports the plaintiff's testimony and statements made in their pleadings. The defendant neither entered an appearance nor defended the claims. In these circumstances, I find and hold that, on the face of it, the plaintiff has proved that the defendant breached the loan agreements on a balance of probabilities.

### **Disposition**

9. Accordingly, I grant prayer (a) of the plaint as prayed noting that judgment in default was already entered with respect to the rest of the prayers.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

