



Commercial Bank of Africa Limited v Tree Tops Academy Limited & 2 others (Civil Case 206 of 2014) [2021] KEHC 136 (KLR) (Commercial and Tax) (7 October 2021) (Judgment)

Neutral citation: [2021] KEHC 136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 206 OF 2014
F TUIYOTT, J
OCTOBER 7, 2021**

BETWEEN

COMMERCIAL BANK OF AFRICA LIMITED PLAINTIFF

AND

TREE TOPS ACADEMY LIMITED 1ST DEFENDANT

JAMES KABIRU NDIRITU 2ND DEFENDANT

DENNIS MIANO KABIRU 3RD DEFENDANT

JUDGMENT

1. Commercial Bank of Africa Limited (CBA) sues The Tree Tops Academy Limited (Tree Tops), James Kabiru Ndiritu and Dennis Miano Kabiru jointly for the sum of Kshs.14,492,533.76 together with interest thereon at 23.5% per annum from 1st March 2014; the sum of Kshs.915,640.99 together with interest thereon at 18% per annum from 1st March 2014 and costs.
2. The bigger debt is said to be on account of a loan facility and the other being an overdraft. The individuals are sued as guarantors to the facilities on the strength of written guarantees and indemnity executed separately by the two (P. Exhibit Pages 47 to 58.)
3. The three Defendants filed a joint Defence. In it are raised four issues. That the loan facility was not released to the 1st Defendant; they did “acquire” the overdraft facilities; the repayment period was unilaterally changed from a term of 6 years to an immediate repayment; and the interest was unilaterally raised by the Bank from 1% per annum to 23.5% per annum.
4. Only the Bank called evidence that was tendered by Dr. Jacob Ogola who is its General Manager, Credit Advisory and Corporate Recoveries.



5. There is evidence that the 1st Defendant has on more than one occasion admitted the debt. Reacting to a demand by the Bank dated 6th June 2013 (P. Exhibit Page 67), the 1st Defendant wrote on 18th July 2013 (P. Exhibit Pages 68 & 69). In that letter the Academy commits to repay the principal loan in full. No complaint is made of non-disbursement or variation of the term for repayment. In addition, although the Academy seeks waiver of the interest, it does not assert that it is unlawful. There is a similar admission in letters of 29th July 2013 (P. Exhibit Page 71) and 4th October 2013 (P. Exhibit Pages 78 & 77). In the latter the Academy requests to repay the facilities in monthly instalment of 150,000/= . The Bank's lawyers respond to this request on 25th November 2013 (P. Exhibit Page 78) in which the 2nd Defendant is informed that the Bank will accept repayment by instalment of Kshs.250,000/= per month or Kshs.1,000,000/= per school term subject to review after 2 school terms. There is no evidence that any payment came through.
6. The Court believes the Plaintiff and enters judgment as prayed in the Plaint, that is, judgment is entered against the Defendants jointly and severally for:-
 - a. Kshs.14,492,533.76 together with interest thereon at 23.5% per annum from 1st March 2014.
 - b. Kshs.915,640.99 together with interest thereon at 18% per annum from 1st March 2014.
 - c. Costs.

Dated and Signed this 29th Day of September 2021

F. TUIYOTT

JUDGE

Dated and Delivered at Nairobi this 7th Day of October 2021

A. MABEYA, FCI Arb

JUDGE

PRESENT:

