



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 426 OF 2014

SHOP IT STORE.....PLAINTIFF

VERSUS

HAVA CONSTRUCTIONS COMPANY LIMITED.....1ST DEFENDANT

CHARLSE SING'OEI.....2ND DEFENDANT

JUDGMENT

1. Vide a plaint dated 5th December, 2014, the Plaintiff instituted this suit against the Defendants jointly and severally for:
 - a) **A liquidated sum of Kshs. 57,300.000 being the principal sum and accrued interest owing as at 23rd November, 2014 to date.**
 - b) **Interest on a above at an agreed rate of 30% per month until payment in full.**
 - c) **General damages for breach of contract and issuing bad cheques.**
 - d) **Costs of the suit.**
 - e) **Any such other or further relief as this honourable court may deem appropriate.**
2. The Defendants filed a joint Statement of Defence and denied the Plaintiff's claim.
3. On 9th December, 2019 the parties entered into a consent and agreed that:
 - I. Judgment be entered against the 1st and 2nd Defendants jointly and severally for the principal sum of Ksh.4,500,000/=.
 - II. That parties do file written submissions on the interest payable.
 - III. All pleadings and documents filed by both parties be admitted.
4. The only question for this court to determine is the question of the interest rate payable. I have read and considered the rival submissions filed.
5. The Plaintiff admits in his submissions that 30% per month interest is exorbitant and proposes the court rate of 6% per annum as captured under Section 26 of Civil Procedure Act Cap 21 Laws of Kenya. Section 26 provides:

(1) Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree in addition to any interest adjudged on such principal sum for any period before the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the

date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 per cent per annum.

6. The Defendants relied on Section 44A of the Banking Act, Cap 488 Laws of Kenya which curbs the interest rate chargeable by debtors otherwise in Latin referred to as *in duplum* rule. Section 44A (2) provide:

Limit on interest recovered on defaulted loans

(1) An institution shall be limited in what it may recover from a debtor with respect to a non-performing loan to the maximum amount under subsection (2).

(2) The maximum amount referred to in subsection (1) is the sum of the following—

(a) the principal owing when the loan becomes non-performing;

(b) interest, in accordance with the contract between the debtor and the institution, not exceeding the principal owing when the loan becomes non-performing; and

(c) expenses incurred in the recovery of any amounts owed by the debtor.

7. The Defendant's relied on the Court of Appeal's definition of the *In duplum* rule which was stated in **Kenya Hotels Ltd v Oriental Commercial Bank Ltd (Formerly known as Delphis Bank Limited) [2019] e KLR** as follows:

"*In duplum*" is a Latin phrase derived from the word "*in duplo*" which loosely translates to "*in double*". Simply stated, the rule is to the effect that interest ceases to accumulate upon any amount of loan owing once the accrued interest equals the amount of loan advanced.

The Defendants submission is that the Plaintiff is not entitled to more than Ksh. 1,500,000/= as interest.

8. The consent entered herein pegged the principal sum herein as Ksh. 4,500,000/=. Paragraph No. 18 of the Plaint reflects that the Defendants had paid the total sum of Ksh.3,000,000/= as at 27th May, 2014. Thus by the date 23rd November, 2014 claimed as the date the accrued interest started running, the outstanding amount was Ksh.1,500,000/=. Consequently, I agree with the Defendants' submission that applying the *in duplum* rule, the interest accrued is capped at Ksh. 1,500,000/=. This court accepts the rate of 6% per annum as reasonable but the total interest should not exceed the sum of Ksh.1,500,000/=.

9. With the foregoing, I enter judgment for the Plaintiff against the Defendants jointly and severally for the principal sum of Kshs.4,500,000/= (less payments made so far) plus interest of Ksh.1.500,000/= and costs of the suit.

DATE, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021

B. THURANIRA JADEN

JUDGE