



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 262 OF 2016

BANK OF AFRICA KENYA LIMITED.....PLAINTIFF

-VERSUS-

RICHARDSON AND DAVID LIMITED.....1ST DEFENDANT

VALIVEETILL PIUS LAWRENCE.....2ND DEFENDANT

ASHOK DHANJIBAHU PANCHAL.....3RD DEFENDANT

J U D G M E N T

1. The Plaintiff, Bank of Africa Kenya limited, is a Company incorporated under the Companies Act and is licensed to operate under the Banking Act.

2. The Plaintiff filed this suit against the three Defendants on 1st July 2015. The three Defendants filed their defence on 4th August 2016. This matter thereafter was placed before a Mediator for mediation process.

3. The Mediator filed a report before Court dated 8th June 2017. By that report the Mediator stated that the Defendants had deliberately refused to attend three mediation sessions on dates fixed by consent.

4. The matter on being placed before the Judge on 2nd October 2017 the Judge made the following orders:

- i. The Defendants are ordered to pay the Mediators fees.*
- ii. The said fees will be paid before the Defendants can be permitted to take part in further proceedings in Court.*
- iii. The mediation is deemed to have been frustrated.*
- iv. Consequently the case will proceed in Court, in the normal manner.*

5. This matter was thereafter fixed for case management conference (CMC) on 15th March, 19th March, 28th May, and 9th July 2018. The Defendants or their Advocate did not attend any of those Court sessions, though served. The Plaintiff complied with CMC on 15th March 2018. It was in those circumstances that this Court on 30th July 2018, in the absence of the Defendants or their Advocate, though served, ordered the Defendant's defence be struck out and the case does proceed by way of formal proof.

6. The case was fixed for formal proof on 26th February 2019 and although the Defendant's Advocate was served, he and the Defendants did not attend.

PLAINTIFF'S CASE

7. The evidence of the Plaintiff was led by Felix Muhati the Plaintiff's Recovery Officer.

8. The Plaintiff between July and August 2013 granted the 1st Defendant various Banking facilities. Those facilities were:

- a) Guarantee 1 [STK] USD 59,000.00
- b) Letter of Credit/Post Import Finance USD 417,000.00.
- c) Temporary overdraft 1 USD 41,600.00.
- d) Temporary overdraft 11 Kshs. 3,400,000.00

9. The 2nd and 3rd Defendants on or about 4th December 2012 executed continuing guarantee and indemnity, in consideration of the Plaintiff making or continuing to make loans advances or granting financial facilities or other accommodation executed continuing guarantee and indemnity, in consideration of the Plaintiff making or continuing to make loans advances or granting financial facilities or other accommodations to the 1st Defendant.

10. It is the Plaintiff's case that in accordance with the terms of the facility offer letter it proceeded to avail the 1st Defendant the following Banking facility:

i. Paying for the Import Letter of Credit issued in favour of Kenya Power and Lighting Company Limited amounting to USD 375,060.01.

ii. Overdraft facility from time to time which as at 20th June, 2016 the amount outstanding was Kenya Shillings 11,160,608.24.

11. The 1st Defendant defaulted in the repayment of those facilities and the Plaintiff made demand for settlement from all the Defendants. The amount the Plaintiff claims from all the Defendants, jointly and severally, is Kshs. 11,160,68.24 and USD 376,555.64 with interest at Court rate from date of filing the suit until payment in full.

12. The Plaintiff exhibited all the supporting documents which include the Bank statements of the amount due and owing by the 1st Defendant.

13. The Plaintiff has proved its case on the required standard. Judgment will be entered as sought and the costs will follow the event: they will be awarded to the Plaintiff.

14. The Judgment of this case is for the Plaintiff against all the Defendants jointly and severally for Kshs. 11,160,608.24 and USD 376,555.64 with interest at Court rate from the date of filing suit until payment in full. The Plaintiff is awarded costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH day of MAY, 2019.

MARY KASANGO

JUDGE

Judgment Read and Delivered in Open Court

in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR THE 1ST DEFENDANT

.....FOR THE 2ND DEFENDANT

.....FOR THE 3RD DEFENDANT