



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO. 1351 OF 2000**

**PRIME BANK LIMITED.....PLAINTIFF**

**VERSUS**

**SAMUEL M'INOTI.....DEFENDANT**

**JUDGMENT**

1. The claim by the Plaintiff against the Defendant is for a sum of Kshs. 7,056,379/95 on account of money lent and financial accommodation. To this principal sum, the Plaintiff seeks interest on Kshs. 6,865,222/95 at 10% per annum and Kshs. 191,157/- at 27% per annum.
2. The claim is denied by the Defendant who has raised a Counter-claim for Kshs. 3,015,820/= in account of a fixed deposit No. 4001885 for Kshs. 2,000,000/= opened by him with the Plaintiff. The difference is the interest said to be earned on it at 23% per annum.
3. Prior to the hearing, the parties filed a joint statement of agreed issues dated 14<sup>th</sup> August 2015 with the following 13 issues:-
  1. Whether the Defendant operated a current account and a loan account with the Plaintiff;
  2. Whether the Defendant owed the sum of Kshs. 6,865,222.95 and interest thereon at 10% p.a to the Plaintiff as at 31.5.2000;
  3. (a) Whether the Plaintiff and the Defendant entered into a written agreement dated 28.1.1999 for a loan of Kshs. 4,803,670 and interest thereon at 10% p.a. to be advanced to the Defendant;
  - (b) Whether the Defendant freely executed the said agreement or whether his signature thereon was procured by duress;
  - (c) Whether the agreement is voidable.
  4. Whether the Defendant drew the amount lent to him under the agreement;
  5. (a) whether the loan was repayable in monthly installments of Kshs. 120,091.75;
  - (b) or, whether such arrangement was an internal fraud
  6. Whether the Defendant defaulted in repayment of the said loan;
  7. Whether the Plaintiff advanced the sum of Kshs. 191,157 to the Defendant as an overdraft on the current account;
  8. Whether the Defendant was indebted to the Plaintiff in the sum of Kshs. 7,056,379.95 as at 30.5.2000;
  9. Whether the Plaintiff issued demand;
  10. (a) whether the Plaintiff still holds the sum of Kshs. 2,000,000 together with the interest thereon placed by the Defendant in a fixed account with the Plaintiff on 30.4.1996;

(b) Or, whether the said sum together with interest accrued thereon was paid to the Defendant on 28.1.2009.

11. Whether the Defendant is entitled to claim the said sum of Kshs. 2,000,000 and interest totaling Kshs. 3,015,800 for the period between 30.4.1996 and 30.4.1998;

12. Whether the Defendant has issued demand for the same;

13. Who is to bear the costs of this suit and Counter claim.

It is clear to the Court that this rather straightforward matter will be resolved on much fewer issues.

4. The hearing proceeded on 6<sup>th</sup> March 2012 after the Court declined an application for an adjournment by Counsel for the Defendant who sought to have his application of 15<sup>th</sup> November 2016 to cease acting (but which was unserved) to be heard first. After declining the request for adjournment, the Court ordered that hearing to proceed at 11.00am on the same day. When the matter was reached at 11.15 am, neither the Defendant nor his Counsel was present. In that event, the Plaintiff's Counsel prosecuted the Plaintiff's case in the absence of the Defendant.

5. Alka Shahi (PWI) is the Chief Manager-Credit of the Bank. His testimony was that, at all material times, the Defendant was a customer of the Bank with Account No. [particulars withheld] domiciled at the Bank's Kenindia Branch.

6. Following a request by the Defendant, the Bank offered to him an overdraft facility through a letter of offer dated 6<sup>th</sup> May 1996 (P Exhibit No. 1). The overdraft was for Kshs. 1.5 million taken against the pledge of a fixed deposit of Kshs. 2 million. This being amongst other securities. On 21<sup>st</sup> May 1999, the overdraft was, through a Letter of Offer of the same day (P Exhibit page 18) enhanced to Kshs. 2,500,000. Amongst the security for this bigger facility, was the Fixed Deposit which had grown on account of interest to Kshs. 2,800,000/= or thereabouts. A letter of lien in respect of the fixed deposit in favour of the Bank was duly executed by the Plaintiff (P Exhibit page 20).

7. The Defendant breached the limit and as at 27<sup>th</sup> August 1999, the debt stood at Kshs. 2,982,288.35. Following a demand letter of 22<sup>nd</sup> September 1999, the Bank exercised its right under the lien and uplifted the fixed deposit with interest which stood at Kshs. 2,985,300.80 and credited the same into the Defendant's account.

8. In the meantime, the parties entered into another agreement dated 28<sup>th</sup> January 1999 in which the Defendant was granted a loan facility of Kshs. 4,803,670.00 (P Exhibit pages 42-49). The loan was to attract interest at 10% per annum and was to be repaid in 60 equal monthly installments of Kshs. 120,691.75/=. This was to be paid by way of monthly debits of Kshs. 121,600/= from the account No. 10949017 (P Exhibit page 50).

9. It is the Bank's case that the Defendant failed to maintain sufficient funds in the current account and the debt grew to Kshs. 6,865,222.95. The Bank also demands a sum of Kshs. 191,157 being the amount debited to the Defendant's account for the first payment.

10. The Court is satisfied that on a balance of probabilities, the Bank granted the Plaintiff a loan facility of Kshs. 4,803,670/= and also terms were contained in the loan agreement of 28<sup>th</sup> January 1999. The Bank produced the loan Account statement (P Exhibit 91) which showed how the loan account increased to Kshs. 7,211,933 as at 23<sup>rd</sup> February 2001. Also produced is a copy of his statement for the current Account No.109079 (P Exhibit pages 25 to 40). The contents of these documents have not been controverted and I believe them.

11. In respect to the counterclaim, there is evidence to show that the Defendant's fixed deposit was used to settle the overdraft facility (see P Exhibit pages 21, 22 and 23). See also the deposit slip of 8<sup>th</sup> November 1999 showing that Kshs. 2,985,300.80 was deposited into the Defendant's debit account (see P Exhibit page 24). The Defendant has not produced any evidence to demonstrate that his account was not overdrawn to the sum of Kshs. 2,914,310.53 as at 28<sup>th</sup> August 1995. The counter claim does not have merit and is for dismissal.

12. The upshot is that the Defendant's counterclaim is dismissed with costs and judgment is entered for the sum of Kshs. 7,056,379.95 in favour of the Plaintiff as against the Defendant. The Plaintiff's claim for interest does not specify from when it ought to be applied. At the Court's discretion and the judgment being for a liquidated sum, interest shall run from the date of filing of the suit until payment in full, on Kshs. 6,865,222.95/= at 10% per annum and on Kshs. 191,157/= at 27% per annum. The Bank shall also have costs of the suit.

**Dated, delivered and signed in an open Court at Nairobi this 7<sup>th</sup> day of June 2018.**

**F. TUIYOT**

**JUDGE**

In the presence of:

Wanjohi for the Plaintiff

N/A for the Defendant

Nixon-Court Assistant