



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

CIVIL SUIT NO. 218 OF 2015

SIDIAN BANK LIMITED (Formerly K-Rep Bank).....PLAINTIFF

VERSUS

MICROHOUSE TECHNOLOGIES LIMITED.....DEFENDANT

JUDGEMENT

1. K-Rep bank Limited is now Sidian Bank Limited. It is the Plaintiff herein.
2. Documents produced in Court show that in the year 2008 the Bank granted certain facilities in the sum of Kshs.3,500,005/= to the Defendant (see the letter of offer of 28th March 2008, (P. Exhibit 5). A request for additional funds was made and a further advance of 1.4 million was made. The Bank complains of default in repayment and has sued for the sum of Kshs.6,985,042.29.
3. The claim is resisted and a Defence was filed on 14th August 2015. One of the Defences is that the Plaintiff's Claim is time barred.
4. When the matter came up for hearing on 14th September 2016, only the Bank's witness and Advocate attended Court. Satisfied that the Defendant's Advocates had been served, the Court allowed the hearing to proceed. Catherine Kisamwa is the Branch Manager of the Plaintiff Bank at its Kawangware Branch. She produced the letter of offer of 28th March 2008 and another letter of 6th May 2009, (P. Exhibit 11) to Cooperative College of Kenya confirming that the Bank had agreed to release an additional sum of Kshs.1.4 million in favour of the Bank.
5. Critical is that when the Bank made a demand for payment of the loan, the Defendant wrote on 3rd April, 2012, (P. Exhibit 33) offering to repay the debt in monthly installments of Kshs.500,000/= beginning from end of April, 2012. In that letter the Defendant requests the Bank to discount its indebtedness to Ksh.5,000,000/= as full and final settlement.
6. Is the Plaintiff's claim time barred as pleaded by the Defendant? It is true that the Plaintiff made the advances in the years 2008 and 2009. It is also true that this suit was filed on 7th May 2015. Yet for purposes of reckoning time, regard must be made to the Defendant's acknowledgement of the Debt made in writing on 3rd April, 2012. Sections 23(3) of The Limitation of Actions Act states:-

“(3) Where a right of action has accrued to recover a debt or other liquidated pecuniary claim, or a

claim to movable property of a deceased person, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect of it, the right accrues on and not before the date of the acknowledgement or the last payment:

Provided that a payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but a payment of interest is treated as a payment in respect of the principal debt”.

There was even a later communication of 30th April, 2013 (P. Exhibit 436) in which the Defendants continued to acknowledge the Debt. The claim is not time barred.

7. The debt is admitted and is not statute barred. There can be no Defence. This Court enters Judgement for the Plaintiff against the Defendant for;-

a. Kshs. 6,985,042.29

b. Costs

c. Interest on (a) and (b) above at Court Rates from the date of filing suit until payment in full.

Dated, Signed and Delivered in Court at Nairobi this 15th day of

June, 2017.

F. TUIYOTT

JUDGE

PRESENT;

Ongunde h/b Oloo for Plaintiff

Billing h/b Obonyo for Defendant

Alex - Court clerk