



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 15 OF 2008

AFRICAN BANKING CORPORATION LTD. PLAINTIFF

- VERSUS -

JOSEPH MBOYA MATHEW DEFENDANT

R U L I N G

- 1.** The application before the court is a **Notice of Motion** dated **9th March 2012**. It is brought under **Order 2 Rules 15 (1) (c) and (d)** and **51 Rule 1** of the **Civil Procedure Rules, 2010**, and **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**. The application seeks that the court be pleased to strike out the Amended Defence filed by the Defendant herein, and to enter judgement against the Defendant herein in favour of the Plaintiff. The application is supported by an affidavit of **GREGORY OMUSOLO** dated **9th March 2012**.
- 2.** The Application is not opposed. It was served upon the Defendant on **14th March 2012** and an Affidavit of Service was filed in court on **17th April 2012**.
- 3.** The Application is premised on the following grounds, namely:-
 - (a)** The Plaintiff's claim is liquidated one and founded on a Hire Purchase Agreement between the Defendant on the one part and the Plaintiff on the other part.
 - (b)** The Defendant in breach of his contractual obligation to the Plaintiff reneged on his obligation to pay monthly installments hence the indebtedness.
 - (c)** The Defendant is well and truly indebted to the Plaintiff in the sum of Kshs.3,309,736.00 in respect of facilities granted to him together with interest thereon at the rate of 11% flat per annum from 30.5.2010 until payment in full and was so indebted at the commencement of the suit.
 - (d)** The Amended Defence filed by the Defendant may prejudice, embarrass or delay the fair trial of this matter.
 - (e)** The Amended Defence is otherwise an abuse of the process of this Honourable Court.

(f) Such other and further grounds and reasons as shall be adduced at the hearing hereof.

4. I have considered the application. In my view, the Defendant has admitted paragraph 3 of the Amended Plaintiff. This paragraph establishes the contractual arrangement between the parties and the loan facility advanced of Kshs.5,000,000/=. All other paragraphs draw their significance from paragraph 3 of the Amended Plaintiff. Paragraphs 4, 5, and 6 of the Amended Plaintiff are merely narrating consequential events. In my view, the Amended Defence is a mere defence and a sham intended to delay the finalization of the suit. Under Order 2 Rule 15 (1) this court has the power to strike out a defence on the grounds that it discloses no reasonable defence in law or that it is scandalous and vexatious or that it may prejudice, embarrass or delay the fair trial of the action or that it is otherwise an abuse of the process of the court. The Amended Defence herein meets all the above grounds.

5. I allow the application and herewith strike out the Amended Defence filed by the Defendant herein on 21st September 2011. I also enter judgement as prayed in the Amended Plaintiff in favour of the Plaintiff against the Defendant.

6. The costs of this application and of the suit shall be for the Plaintiff.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 2ND DAY OF JULY 2012.

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Wambugu H/B for Luseno for the Plaintiff

N/A for the Defendant

Teresia – Court Clerk