



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO 2220 OF 1996**

**KABANSORA LIMITED.....PLAINTIFF**

**VERSUS**

**JANE DAVID KANGENDA & ANOTHER.....DEFENDANT**

**RULING**

The plaintiff filed a suit against the defendants for Kshs. 1.8 million being the sum due and owing in respect of goods supplied by the plaintiff to the defendants particulars of which were said to be within the defendants' knowledge.

The claim was denied in a statement of defence filed by the 1st defendant on 30th October, 1996.

The application before me is for summary judgment under order 35 Rule 1 of the Civil Procedure Rules. It is supported by an affidavit of Mitesh Patel who is said to be the Managing Director of the plaintiff.

The first defendant has filed grounds of objection and a replying affidavit. The claim is denied and the application for summary judgement resisted.

In an application of this nature the court has to be satisfied that there is not a defence on merit or as commonly put, no triable issues that call for a full trial. The provisions of order 35 Rule 1 are to be invoked in clear and obvious cases only. "In any given case it is the duty of the court to examine with minute care the documents and facts laid before it... the merits of the issues are investigated to decide whether leave to defend should be granted...." (See Gupta -v- Continental Builders Ltd (1978) K.L.R.83).

The plaintiff has provided copies of delivery notes with accompanying invoices showing the total amount claimed. There are also copies of some cheques issued by both defendants in favour of the plaintiff which were dishonoured on presentation.

When the first defendant requested for particulars of the claim from the plaintiff the same were given. There was no rejoinder to the said particulars. As regards the dishonoured cheques, it is the defendant's case that they were for goods which were not delivered hence the reason for stopping the same. It is also alleged that the defendants over-paid the plaintiff by Kshs. 192,400/- . To support that contention a copy of accounts prepared by Ndeti and Associates has been annexed to the affidavit of the first defendant.

The statement of accounts is said to have reconciled the account and came up with excess payment by the defendants. I note however that the invoice numbers reflected in the said statement does not tally with the answer to the request for particulars. further as I have noted, there was no rejoinder to the said answer. above all, the defendants have not raised any counterclaim against the plaintiff for the alleged over payment of Kshs. 192,400/-.

About the dishonoured cheques, the same were not stopped as alleged in paragraph 5 of the affidavit of the first defendant. The remarks endorsed thereon are, " Refer to Drawer" and "No arrangements".

At the end of it all I believe the statement of defence was filed to delay the payment due to the plaintiff for goods sold and delivered to the defendants. I see no triable issues that call for a full hearing.

Accordingly judgment is hereby entered against the defendants jointly and severally as prayed in the plaint plus costs and interest. The plaintiff shall also have the costs of this application. Orders accordingly.

Dated and delivered at Nairobi this 5th day of March, 1998.

A. MBOGHOLI MSAGHA

JUDGE