

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 3150 OF 1997

PREMIER SAVINGS & FINANCE LIMITED.....PLAINTIFF

-versus-

AL NASIR PEER MOHAMED.....DEFENDANT

R U L I N G

This is an application by way of Notice of Motion Civil Procedure rules and section 3A of the Civil Procedure Act for an order that summary judgment be entered against the defendant in the sum of Kshs. 2,116,650.40 with interest as prayed in the plaint.

The application is supported by an affidavit sworn by one Zaitun Esmail a Senior Manager of the plaintiff company. It is opposed and grounds of objection have been filed on behalf of the defendant.

I have gone through the pleadings, the application and submissions made by both learned counsel. It is trite law that the summary procedure which the plaintiff has applied for should be exercised only in plain and obvious case. It must be clear that the defendant has no answer to the plaintiffs claim, that there is no defence on merit and no triable issues that justify a full trial.

The plaintiff's claim herein is grounded on a hire purchase agreement where the plaintiff advanced the defendant some money to purchase a motorvehicle. The defendant made some payments, and then sold the car to a third party before he completed payment. That agreement is part of the evidence before the court.

Demand was made. The defendant wrote out some cheques in payment of the balance. They were dishonoured. He wrote to the plaintiff arranging payment and at one stage offering to settle the matter at a sum lower than what was owing. This was not acceptable to the plaintiff.

The defendant has alleged that he has paid the sum due in full under the agreement. He who alleges must prove. I have not seen any such proof.

The defendant is bound by the agreement he executed. he has breached the same. I see no triable issues in this matter accordingly I enter judgment for the plaintiff against the defendant as prayed in the plaint.

The plaintiff shall also have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of March, 1998.

A. MBOGHOLI MSAGHA

JUDGE

Majanja for Weda for plaintiff/applicant

No appearance for defendant/respondent