



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1635 OF 1997

SENATOR CARDS LIMITED.....PLAINTIFF

-Versus-

ACCROW CONTRACTORS LIMITED.....DEFENDANT

RULING

This is a Notice of Motion brought under Order XXXV of the Civil Procedure Rules in which the plaintiff/applicant is seeking orders that::

- “1. Judgment be entered for the plaintiff against the defendants as prayed in the plaint.
2. The Defendants do pay the costs of this application. The application is supported by the sworn affidavit of Regina K. Marambi. In that affidavit Regina K. Marambi depones:
 1. I am the Legal Officer of the plaintiff and I am duly authorised to make this affidavit.
 2. The Defendants are truly and justly indebted to the plaintiff in the sum of Shs.616,184.50 being the amount due as at 25th June, 1997 arising from the use of the plaintiff’s charge card the particulars of which are set out in the plaint and were so indebted at the commencement of this suit.
 3. By an application dated 21 November, 1987 the First defendant sought to have issued to the second defendant the plaintiff’s charge card. A copy of the application is annexed hereto and marked page 1 of the exhibit.
 4. Under clause 6 of the conditions of use of the card the plaintiff was to charge to the card accounts a late payment fee on the amount due and payable but unpaid or deemed to be unpaid in respect of the previous month’s statement. The service charge was stated to be 2.5% per month on amounts that remained unpaid after 30 days from the date of the statement of account and was subject to revision without prior notice. The same currently stands at 4% per month.The conditions of use are annexed and marked page 2 of the exhibit.
5. The second defendant used the card on various dates to make purchases on credit and the statement of the second defendant’s accounts are annexed hereto (page 3 of the exhibit)
6. The Defendants have received various demands for payment but have refused and/or neglected to pay the amount claimed.

7. I verily believe that the defendants have no defence to this claim.

8. There is now produced and shown to me exhibit jointly marked 'RKM 1'.

9. The matters stated herein above are true and are as extracted from my employer's files and records"

Mr. Ohaga for the plaintiff/applicant argued that in the defence filed there was denial of agreement but this cannot be so since there was a formal agreement. Mr. Ohaga submitted that the rate of interest was 4%. Looking at the defence filed it was Mr. Ohaga's contention that it raised no triable issue and he asked for summary judgment to be entered as prayed in the plaint.

Mr. Mbaabu in opposing this application stated that the plaintiff cannot print out a single bill that has not been paid. In his view there were triable issues.

If I understand Mr. Mbaabu well he was saying that his client were disputing service charge and interest. But it must be observed that this was a running account. The parties signed an agreement which stipulated that the plaintiff would charge interest and service charge and that it would change from time to time. From the statements produced it is clear that the defendants always paid less than the amount due.

In Barclays Bank of Kenya Ltd. v. Hesbon Anyona Khandisi H.C.C. No. 309 of 1994 – unreported Ole Keiwa J. dealt with a case similar to this one before me and having considered decisions of similar cases had this to say:-

“This line of authorities seem to confirm that where a party signs an agreement, the same becomes enforceable in all its terms against such a party and there cannot be any triable issue when such an agreement is clear on any of the matters agreed to by such a party”

I am in entire agreement with the above observation. In the present case the plaintiff used to prepare and send statement of account to the defendants for payment. This is the usual charge card business where the applicant a customer enjoys the services of the charge card company by purchasing goods and services without paying for them immediately and only paying later after receiving the statement of account. For this the charge card company naturally will charge interest and service charge. This is stipulated in the agreement. It should be noted that the service charge and rate of interest may charge from time to time and the customer has no say in this. Only the agreement is signed the parties are to be bound by the agreement. One cannot complain later that the conditions are unfair or harsh. The court cannot re-write such contracts. In this case there are no triable issues.

The upshot of the foregoing is that the application succeeds and I enter summary judgement in favour of the plaintiff as prayed in the plaint. The plaintiff/applicant will have the costs of this suit. Order accordingly. Delivered at Nairobi this 28th day of July, 1998.

E. O. O'KUBASU

JUDGE

28.7.1998

Coram: E. O'Kubasu J

Mr. Ohaga for plaintiff

Mr. Mbaabu for defendant Mr. Njihia - Court Clerk

Order: Ruling delivered

E.O. O’KUBASU

JUDGE

Mr. Mbaabu: I apply for certified copies of the proceedings and the Ruling.

Order: Mr. Mbaabu to be supplied with certified copies of Proceedings and the ruling.

E.O. O’KUBASU

JUDGE

11.8.1998:

The plaintiff’s costs herein certified in the sum of Ksh.69,350/- only as against the plaintiff pursuant to R.68A(2) of the Advocates remuneration order.

Dated this 24th day of August, 1998.

C.K. NJAI

Principal Deputy Registrar

19.10.98: Upon reading application dated 9.10.90 issue attachment order as prayed

Deputy Registrar

21.10.1998 Given the manner in which costs were assessed the defendant is to be served with a ten day notice of contention to execute.

C.K. NJAI

Principal Deputy Registrar

25.11.98

Upon reading application dated 9.10.1998 issue

attachment order as prayed.

C.K. Njai

Principal Deputy Registrar