

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 655 OF 1998

WELLMA INSURANCE BROKERS LTD.....PLAINTIFF

VERSUS

MUHORONI SUGAR CO. LTD.....DEFENDANT

R U L I N G

This is an application by way of Notice of Motion under Order 35 Rule 1 of the Civil Procedure Rules seeking an order that judgment be entered for the plaintiff against the defendant as prayed in the plaint.

The application is supported by an affidavit sworn by the learned counsel for the plaintiff. The defendant has filed grounds of opposition and a replying affidavit sworn by the learned counsel for the defendant.

In the plaint filed herein on 20th March, 1998 the plaintiff claimed a sum of Kshs. 1, 260,808.00 plus a penalty of 5% thereon. The sum is said to be total annual premium payable to the plaintiff from the defendant. The 5% penalty claimed on the amount due is the statutory penalty introduced by Insurance Amendment Act of 1996 which is imposed on premiums that remain outstanding beyond 60 days of the risk being placed. The defendants have conceded indebtedness to the plaintiff and that is to be found in the replying affidavit and the submissions herein.

Paragraph 4 of the replying affidavit sworn by the learned counsel for the defendant admits the indebtedness of the principal amount but that half of the said sum has been paid to the plaintiff. There is also the prayer that the defendant is willing to pay the balance of the principal amount in three instalments.

As I have said, the 5% penalty claimed by the plaintiff is a Statutory requirement and no defence would exist against that payment. Secondly judgment can only be entered in a clear and obvious case. Going by the affidavit of the defendant this is thus such a clear and obvious case to warrant the orders sought. It has not been shown that the sum paid by the defendant is in any way connected with the claim herein and in any case it was paid after the commencement of this suit. If there is any connection the parties can reconcile the accounts.

I accordingly enter judgment for the plaintiff against the defendant as prayed in the plaint plus costs of both the main suit and this application.

Orders accordingly

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

A. MBOGHOLI MSAGHA

JUDGE

Wanga for the respondent
Iseme for the applicant

