

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 150 OF 1997

JOHN KAMANDE MWANGI.....PLAINTIFF

VERSUS

TRUST BANK LTD.....1ST DEFENDANT

AJAY SHAH.....2ND DEFENDANT

RULING

This is an application by way of Notice of Motion under Order 35 Rules 1&2 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for orders that the amended defence filed on 4th June, 1998 be struck out as an abuse of the process of court and judgment be entered in favour of the plaintiff as prayed. The application is supported by an affidavit sworn by the plaintiff to which grounds of opposition and a replying affidavit have been filed on behalf of the defendants.

It is trite law that the order sought by the plaintiff is only available in clear and obvious cases. The defence sought to be struck out must be such that it discloses no triable issues that warrant a hearing. I have related this principle to the pleadings and with respect, it cannot be said that the amended defence does not have triable issues. Several are disclosed. Further, the provisions of law invoked by the learned counsel for the plaintiff relate to prayers or claims for liquidated sum. That is not the case here.

Accordingly the application fails and is hereby dismissed with costs.

Dated and delivered at Nairobi this 23rd day of September, 1998.

A. MBOGHOLI MSAGHA

JUDGE