



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**CIVIL CASE NO. 2601 OF 1997**

**MIDDLE AFRICA ACCEPTANCES &**

**MIDDLE AFRICA INVESTMENT LTD.....PLAINTIFF**

**Versus**

**PETER NJOKA.....DEFENDANT**

**RULING**

The fact that the defendant gives the plaintiff a sum of Sh.247,596.40 is not denied. On 16.6.1997 by way of notice of motion, the plaintiff applied for summon judgement.

Another fact which is not denied is that the defendant is owed money by one RENEE:

The defendant also filed an application by way of Chamber Summons seeking leave to join the said RENEE as a 3rd party to this suit with a view of assigning the debt to the said 3rd party. Both applications were argued together. The issue for determination is the assignment of contractual liabilities to 3rd parties.

The question that arises here is whether B can assign the obligation that rests upon him by virtue of his contract to a third party "C" so that the contractual liability is effectively transferred from him to "C". Can he substitute somebody else for himself as obligor. The law has unhesitatingly answered this question in the negative.

In the case of TOLHURST Vs. ASSOCIATED PORTLAND CEMENT MANUFACTURES (1900) LTD (1902) 2 KB 660 and 668 COLLINS MR had this to say.

***"It is I think, quite clear that neither at law nor in equity could the burden of a contract be shifted off the shoulders of a contractor on to those of another without the consent of the contractee. A debtor cannot relieve himself of his liability to his creditor by assigning the burden of the obligation to somebody else; this can only be brought about by the consent of all three and involves the release of the original debtor".***

In the present case the plaintiff has not consented to such arrangement.

As submitted by the defendant that the intended 3rd party has agreed to settle his debt, he ought to be paid by his debtor so that he can also settle his debt with his plaintiff.

For those reasons the application by the defendant for leave to join a 3rd party so as to assign his debt to him fails and the same is dismissed.

The plaintiffs' application for summary judgment should succeed and the same is allowed. I enter judgement for the plaintiff as prayed in the plaintiff with costs and interest.

**J.L.A. OSIEMO**

**JUDGE**

**16.11.1998**