



Trust Bank Limited (In Liquidation) (Suing through the Deposit Protection Fund Board, the Central Bank Appointed Liquidator) v Eagles Tiles and Allied Product Limited & 2 others (Civil Suit 239 of 2004) [2025] KEHC 1133 (KLR) (Commercial and Tax) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 239 OF 2004
PM MULWA, J
FEBRUARY 27, 2025**

BETWEEN

**TRUST BANK LIMITED (IN LIQUIDATION) PLAINTIFF
SUING THROUGH THE DEPOSIT PROTECTION FUND BOARD, THE
CENTRAL BANK APPOINTED LIQUIDATOR)**

AND

**EAGLES TILES AND ALLIED PRODUCT LIMITED 1ST DEFENDANT
MAVJI RAMJI LADHA 2ND DEFENDANT
MAHENDRA RAMJI LADHA 3RD DEFENDANT**

JUDGMENT

Brief facts

1. The plaintiff herein Trust Bank Limited (in Liquidation) a limited liability company incorporated in the Republic of Kenya instituted the instant suit against the defendants by a plaint dated 6th May 2004 seeking judgment as follows:
 - i. Judgment against the 1st Defendant for the sum of Kshs. 78,244,774.55 with interest at 15 % p.a. from 1st April 2003 until payment in full.
 - ii. Judgment against the 2nd and 3rd Defendants jointly and severally for the sum of 25,000,000/- with interest at 15% p.a. from 5th August 2002 until payment in full.
 - iii. Costs of the suit.



- iv. Any other relief deemed fit by the court.
2. The plaintiff's case is that Eagles Tile and Allied Product Limited (herein referred to as the "Company") through its directors Mavji Ramji Ladha and Mahendra Ramji Ladha on 27th February 1997 sought and were granted financial accommodation from the plaintiff in the sum of Kshs. 25,000,000/=. Mavji and Mahendra guaranteed the loan facility and executed a personal credit guarantee on 27th February 1997. The money was deposited in the Company's account number 0025801-00600 on 3rd March 1997.
 3. According to the plaintiff, the guarantors were under the contract obligated to pay the bank, on demand, all money and discharge all obligations and liabilities due and owing by the 1st defendant to the bank. The plaintiff further states that it was an express term of the guarantee that the amount recoverable from the guarantors was limited to the principal sum.
 4. The Company failed to honour repayment of the loan which fell into arrears, a demand notice was issued to the Company but it failed to make the repayment. The guarantors were notified of the debt but failed to pay. As of 1st April 2003, the outstanding loan balance plus interest was Kshs. 78,244,774.55.
 5. The 2nd and 3rd defendants through the firm of Kinyanjui Njuguna Advocates filed a joint statement of defence on 13th June 2007. They deny being directors of the 1st defendant and executing a personal guarantee in favour of the 1st defendant. They argue the claim for interest is speculative and deny applying for and being granted a loan facility. They aver that if any loan was dispersed it was contrary to the 1st defendant Memorandum and Articles of Association and urged the court to dismiss the plaintiff's suit.
 6. Despite being served with the summons to enter an appearance the Company failed to enter an appearance or file a defence, subsequently judgment in default of appearance was entered on 11th November 2008 in the sum of Kshs. 78,244,774.55 with interest at 15% p.a. from 1st April 2003 until payment in full, together with costs of the suit.
 7. On 4th March 2023 when the matter came up for hearing, the Court was informed the suit against the 2nd defendant had been withdrawn and the only remaining claim was against the 3rd defendant. The 3rd defendant, who was now acting in person, failed to attend court despite being properly served. The case proceeded for hearing.
 8. In proving its case the plaintiff called one witness Stanley Milimu (Pw1) who produced documents to demonstrate that the 2nd and 3rd defendants were directors of the Company and each executed a personal guarantee in favour of the 1st defendant for a loan facility of Kshs 25,000,000/-. He also adduced the Company's resolution of 27th February 1997 to the effect that the company could open an account with Trust Bank Limited and proceed to borrow a loan of Kshs 25,000,000/-.
 9. The plaintiff filed brief final submissions dated 5th March 2024 and argued that the case against the 3rd defendant was uncontroverted and his pleading remained a mere statement and the court ought to believe the plaintiff's evidence. Reliance was placed in the case of Edward Muriga through [*Stanley Muriga vs Nathaniel D. Schutter Civil Appeal No. 23 of 1997*](#).

Analysis

10. I have considered the pleadings, the documentary evidence presented and the submissions filed. The only issue for determination is whether the 3rd defendant is liable for the Company's debt.



11. It was also submitted that the 3rd defendant having signed a personal guarantee and indemnity dated 27th February 1997, was bound by the terms thereof. The plaintiff argues that a guarantee makes a binding promise to the lender that he will be liable for a present or future debt or obligation of the borrower if the borrower defaults.

“A contract of guarantee is an accessory contract, by which the surety undertakes to ensure that the principal performs the principal obligations. It has been described as a contract to indemnify the creditor upon the happening of a contingency namely the default of the principal to perform the principal obligation. The surety is therefore under a secondary obligation which is dependent upon the default of the principal and which does not arise until that point.” - Law of Guarantee by Geraldine Andrews & Richard Millet 2nd Edition, at page 156.

12. The plaintiff's case was that the 2nd and 3rd defendants were liable as sureties for the 1st defendant's debt in the sum of Kshs. 25,000,000/-. They each signed a deed of guarantee.

13. I have perused the personal guarantee signed by the 3rd defendant dated 27th February 1997 and it is evident that he guaranteed a sum of Kshs. 25,000,000/- which is the principal sum secured by the company.

14. It is therefore clear that the 3rd defendant as a guarantor was bound by the terms of the personal guarantee agreement and was under the obligation to pay the bank on demand, all the money and discharge obligations and liabilities incurred by the bank.

15. In Halsbury Law of England 4th Edition Volume 20 paragraph 194 the obligations of a guarantor are outlined as follows:

“On the default of the principal debtor causing loss to the creditors, the guarantor is a part from special stipulation immediately liable to the full extent to his obligation, without being entitled to require either notice of the default or previous recourse against the principal.”

16. The legal obligation of a guarantor arises in case of default. This position was discussed in Ebony Development Company Ltd vs Standard Chartered Bank Ltd (2008) eKLR where the court held:

“The obligation of a guarantor is clear. It (sic) becomes liable upon default by principal debt it is not guarantor to see to it that the borrower complies with his contractual obligation but to pay on demand the guaranteed sum.”

17. Clause 3(b) of the personal guarantee agreement states the 3rd defendant was liable for the legal charges of interest accruing after demand was recoverable in addition to the principal sum notwithstanding that the said amount may be over the limited principal sum.

18. From the foregoing and based on the personal guarantee, I find there is sufficient evidence to show that the 3rd defendant by the letter of guarantee was liable to the plaintiff on the principal amount together with interest.

Disposition

19. The plaintiff has adduced sufficient evidence on a balance of probability of its claim against the 3rd defendant. In the circumstances, I enter judgment against the 3rd defendant for the sum of Kshs.



25,000,000/- with interest at 15%. p.a. from 5th August 2002 till payment in full. Costs will be to the Plaintiff.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Kimani for Plaintiff

N/A for Defendants

Court Assistant: Carlos

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