REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 791 OF 1982

GITHUNGURI..... PLAINTIFF

VERSUS

PAN AFRICAN INSURANCE COMPANY LIMITED..... DEFENDANT

RULING

This suit arises out of an alleged breach of a loan agreement between the plaintiff and the defendant. In his plaint, the plaintiff prays for judgment against the defendant for *interalia* (a) specific performance of the said agreement and (b) damages in addition to or in lieu of specific performance. He has now abandoned prayer (a) of the plaint for specific performance and by this notice of motion which he has filed under order XII rule 6 of the Civil Procedure Rules he is praying for interlocutory judgment in his favour for damages as prayed in prayer (b) of the plaint.

By its letter dated 9th October 1980, which was in response to the plaintiff's application for a loan, the defendant company agreed to grant him a loan in the sum of Kshs 10,000,000 on terms and conditions contained therein. The aforesaid letter of 9th October 1980 reads as follows:

Pan Africa Insurance Company Ltd,
P O Box 87007,
Mombasa Kenya

Ref MV /RK
9th October, 1980

Mr S M Githunguri
P O Box 49194
NAIROBI Kenya

Dear sir

LOAN

We refer to your loan application dated 11th January, 1980. We are agreeable to grant you a loan of Kshs 10,000,000 payable Kshs 1,000,000 commencing from March, 1982 and thereafter Kshs 1,000,000 every month against registration of the first mortgage of the property on plot No 209/2461 University Way Nairobi in our favour and on the following terms and conditions:

1. Until the loan of Kshs 10,000,000 is paid in full, you will pay interest on the amount advanced at 14% p. a every month.
2. The loan will be for a period of ten years repayable in 120 monthly instalments.
3. The rate of interest shall be 14 % per annum or such other rate as may be determined by the company from time to time. Interest will be charged with annual rest but repayable by apportioned monthly instalment.
4. The principal sum and interest shall be repaid by equal monthly instalments of Kshs 159,760 through an irrevocable bankers order free of Bank exchange or commission to the credit of the bank account of the company in Mombasa.
5. You will not receive any rents for more than one month in advance without our prior consent in writing.
6. You will effect a comprehensive houseowner's insurance with us for Kshs 42,000,000 and complete the insurance proposal and pay premium in advance for such insurance without any allowance of commission before the loan amount is paid by us. The insurance policy will be in our joint names as mortgagor and morgagee. If the premium on the comprehensive houseowner insurance is not paid on the due date, the subsequent instalments received will be utilized towards the payment of the outstanding premium.
7. You are required to route General Insurance Business acceptable to us yielding a minimum annual premium of Ksh 300,000.
8. A plaque reading "charged to Pan Africa Insurance Co Ltd" will be supplied by us which should be affixed at the entrance of the building or at a prominent place on the building as approved by us.
9. Please let us have your cheque for Kshs 100,000 being the commitment fee.
10. The loan document would be prepared at your cost by our advocates, Messrs, A B Patel & Patel, P O Box 80274, Mombasa and will incorporate the above conditions as well as all the normal terms and conditions of the mortgage.
11. If the above terms and conditions are acceptable to you, please confirm your acceptance in writing on or before 25th October, 1980 after which date the loan offer shall be withdrawn.

Yours faithfully

SGD
M VAZ A A PATEL
GENERAL MANAGER MANAGING DIRECTOR"

The plaintiff confirmed the acceptance of the offer of the loan within the stipulated period vide his letter dated 13th October 1980 which reads as follows:

"13th October, 1980.

Mr A A Patel,
The Managing Director,
Pan Africa Insurance Co Ltd,
P O Box 87007,
MOMBASA

Dear Sir,

LOAN

I refer to your letter ref MV/ER of 9th October, 1980 for which I thank you.

I accept your offer of Kshs 10 million on terms and conditions detailed in your letter. However, I shall suggest a slight amendments in paragraph 8 of your letter, regarding a plaque reading " charged to Pan African Insurance Co Ltd" I shall discuss this in greater details next time I am in Mombasa in very near future.

As you are aware, I have applied for a loan of Kshs 20 million but, due to the present tight funds conditions I appreciate your present offer of Kshs 10 million. However, should your liquidity position improve in future, I appeal that my application be reconsidered with a view of increasing the loan amount to Kshs 15 million. Please advise whether this will be possible.

I am making arrangement to forward to you a cheque to cover commitment fee but, in the meantime, I would like to record my appreciation to you and to your board of directors for the assistance extended to me.

Yours faithfully

SGD S M
Githunguri"

Later the plaintiff complied with condition no 9 of the offer and sent a cheque for Kshs 100,000 to the defendant in respect of the commitment fee. His covering letter reads:

"29th June, 1981
Pan African Insurance Co Ltd,
Moi Avenue
P O Box 87007
MOMBASA

Dear Sir

FINANCE FOR LILIAN TOWERS

Following your offer of a loan of Kshs 10 million details of which are stipulated in your letter ref MV/rr OF 9TH October, 1980 I enclose herewith a cheque for Kshs 100,000 being commitment fee which kindly acknowledge receipt.

Yours faithfully

S M Githunguri
Encl 1 cheque

CC
Mr C K Kanji,
A B Patel & Patel,
P O Box 80274,
MOMBASA

The defendant accepted the aforesaid cheque for Kshs 100,000 but after two months sent its own

cheque to the plaintiff for a similar amount under cover of its letter dated 28th August 1981 the relevant part of which reads:

“We refer to our letter dated 9th October 1980 and have to advise you that the loan facility stands lapsed. Y

our commitment fee of Kshs 100,000 is returned.

Please acknowledge receipt.”

The plaintiff declined to accept the defendant’s cheque and returned it to the defendant under cover of his letter dated 2nd September 1981 in the second paragraph of which he stated;

“By an offer in writing made by you and contained in your letter of 9th October 1980, you agreed to grant me a loan of Kshs 10,000,000 which offer I accepted by my letter of the 13th October well within the stipulated time. In pursuance of the said agreement I sent to you, under cover of my letter of 29th June, 1981 my cheque for Kshs 100,000 being the commitment fee as sought by you which you dully accepted and banked and the amount debited to me.”

The defendant acknowledged receipt of the plaintiff’s aforesaid letter of 2nd September and wrote to him as follows:

“Ref MV RR
Pan Africa
Insurance Company Limited
P O Box 87007,
Mombasa, Kenya

9th September, 1981
Mr S M Githunguri
P O Box 49194
NAIROBI Kenya

Dear Sir,

LILIAN TOWERS
LOAN ON MORTGAGE

We acknowledge receipt of your letter dated 2nd instant.

We are aware that you had accepted our offer as per our letter of 9th October, 1980, however, the commitment fee was not paid during the stipulated time and as such our offer lapsed. S

hould you require the loan facilities, we would suggest that you apply for them again so that the matter could then be placed before our Board of Directors for their consideration.

Yours faithfully

SGD
M VAZ

GENERAL MANAGER”

It is I think worth noting what the defendant stated in the second paragraph of its letter. According to it, the only reason given by it for the withdrawal of its offer of the loan or for the unilateral termination by it of the loan agreement between it and the plaintiff was the alleged non payment of the commitment fee within the alleged stipulated time, and it is pertinent to note that the terms and conditions of the offer stipulated no time within which the commitment fee was to be paid (see condition No 9 of the offer). It is also worth noting that when the commitment fee was paid on 29.6.81, the defendant accepted it and retained it unconditionally for 2 months before its unilateral termination of the loan agreement.

It is on the above facts that the plaintiff has filed this suit. The defendant has raised a number of defences for the termination by it of the loan agreement but none of these reasons was stated in its letter of 9th September 1981 according to which the only reason given by it was the alleged non payment of the commitment fee within the alleged stipulated time. That reason, it will be seen is not now a part of its defence in this suit.

Mr Lakha for the plaintiff contends that the defendant does not deny that there was an offer of a loan as averred in paragraph 3 of the plaint nor, he further contends, has the defendant denied that there was an acceptance of the offer by the plaintiff and the payment of the commitment fee by him as averred in paragraph 4 of the plaint. He argues that the alleged prior negotiations as averred in paragraph 2 of the defence are inadmissible and in support of his argument has cited the case of *Damodar Jinabhai & Co Ltd and another v Eustace Sisal Estates Ltd*. [1967] EA 153 where at page 155 Sir Charles Newbold, P., said *inter alia*:

“Before I deal with these submissions I think I should refer to four matters which were raised by Mr Nazareth ... The first matter was that the Chief Justice should have looked at a previous draft of the contract in order to determine the meaning of Cl 7. The Chief Justice refused to do so and I entirely agree with his decision. It is true that in certain circumstances evidence of surrounding circumstances may be admissible in order to interpret a document (see section 29 proviso (6) of the Evidence Act) but in no case is evidence of prior negotiations admissible (see Virbai v Bhatt (1) and the evidence of a prior draft which has been rejected, of a contract is *ipso facto* nothing other than evidence of prior negotiations.

Mr Muite, without specifically referring to any authority in support of the defendant’s averment in paragraph 2 of the defence that the “whole contract was not contained in the said letter of offer in that the said letter was preceded by discussions and correspondence between the plaintiff and the defendant,” has argued that the defendant is entitled to raise any number of defences that are available to it. While I accept that the defendant is entitled to raise alternative defences, I cannot, with respect, accept that it can bring in the evidence of discussions and correspondence which allegedly preceded its written offer of 9th October 1980. That offer contained two vital conditions which the plaintiff was required to comply with before the offer and acceptance could bind the parties under a valid and enforceable contract. These were condition No 11 which required the plaintiff to accept the offer on or before 25th October 1980 and condition No 9 which required him to pay commitment fee of Kshs 100,000 without any stipulation as to the date before which it was to be paid. He complied with both the conditions and on payment of the commitment fee which was accepted and retained by the defendant for 2 months, the contract between the parties became binding and enforceable on such terms and conditions as were stated in the letter of offer. Any subsequent variation of or addition to the contract could only be by mutual agreement of both parties and not unilaterally by either party. In the instant case there was no subsequent variation of or addition to the contract by mutual consent of the plaintiff and the defendant.

The next question that arises is, whether the defendant was entitled to rescind the contract for non performance of any other term or condition.

In paragraph 3 of its defence the defendant has averred *inter alia* that on the date of the institution of this suit, the building was incomplete and that the plaintiff was not in a position to provide security of a first mortgage over the suit premises without which the loan could not have been granted. Mr Lakha has argued that the defendant cannot rely on the defence which is pleaded in paragraph 3 of the written defence first because that was not the ground on which the contract was rescinded by the defendant vide its letter dated 9.9.81 and secondly that when the contract was rescinded this defence was within the knowledge of the defendant and was available to it but it did not then rely upon it and must therefore be deemed to have waived it. Mr Lakha further contends that in the circumstances the defendant is not precluded from raising this defence under the doctrine of waiver and estoppel.

In *South British Insurance Co Ltd v Samiullah* [1967] EA 659 where the Insurance Company after becoming aware of the facts which entitled it to repudiate the policy paid the claim under it to the insurer, without repudiating it, was precluded from reclaiming the amount from the insurer on the ground that the Insurance Company must be deemed to have waived its right to repudiate the policy. Law JA at page 661 observed:

“The judge found that the appellant became possessed of full knowledge of the facts allegedly concealed on May 19, but instead of repudiating the policy filed suit on the following day affirming the policy, and that by not claiming the right to repudiate the policy until the amended plaint was filed more than 5 months later, it must be deemed to have waived the right to repudiate the policy ...”

In *Panchaud Freres SA v ET General Grain Co*. [1970] 1 Lloyd’s Rep 53 at page 57 Lord Denning, MR stated:

“If a man who is entitled to reject goods conducts himself as to lead the other to believe that he is not relying on that ground, then he cannot afterwards set it up as ground for rejection, when it would be unfair or unjust to allow him to do so.”

At pages 372 and 373 of Chitty on Contracts, 21st edition, volume 2, it is stated:

“675. Waiver of breach of Condition. Acceptance by the insurers of premiums after discovery of the breach of a condition of the policy by the assured evinces an election on their part to affirm the policy. If such:

“premium is accepted by their agent, and remitted to them with information of the breach, they must return at once if they wish to rescind the policy on the ground of breach of conditions. So, generally, where the defendants, with full knowledge of the facts, by their acts or conduct lead to plaintiff reasonably to suppose that they do not intend to treat the contract at an end for the future, on account of his breach of a condition, they are estopped from setting up the breach as a defence. Thus where agents have accepted life insurance premiums and paid them to the company with knowledge that the assured had broken a condition, and where in a motor insurance case, a clerk of the insurers had notice of such a breach and the insurers had subsequently paid a claim under the policy, the insurers have been held to be estopped from setting up the breach of condition as a defence.”

In *Lickiss v Milestone Motor Policies* at Lloyd’s (1966) 2 All ER 972 at pages 975 and 976 Lord Denning MR spelt out the principles of waiver as follows:

"The principle of waiver is simply this: that if one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted on, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict rights when it would be inequitable for him to do so (see *Plasticmoda Societa* per *Agioni v Davidsons (Manchester) Ltd.* [1952] 1 Lloyd's Report 527). When the insurers got the letter from police on June 18, they could have asked for the notice of prosecution and the summons if they had wanted them. Instead of doing so, they merely wrote to the motor cyclist on June 23 Saying "it would be appreciated if you would let us know why you have not notified us of these proceedings. By not asking for documents, they as good as said they did not want them. So he did not send them. I do not think that they should be allowed not to complain of not receiving them. I think that they waived the condition."

Mr Muite argues that there was no waiver by the defendant of any of the terms or conditions of the contract. I have considered the cases cited by him in support of his contention. With respect, I am unable to accept his contention.

In the light of the authorities cited above, I hold that when the defendant rescinded the contract on 9.9.81 on the sole ground of the alleged nonpayment of the commitment fee, it is deemed to have waived any of the other terms or conditions that were available to it under the contract and is therefore precluded from raising any defence which is based on the ground other than the one on which it terminated the contract.

At any rate the averment in paragraph 3 of the defence is not supported by the terms and conditions of the contract. It is based upon the opening paragraph and paragraph no 10 of the defendant's letter dated 9.10.1980 neither of which specified the date by which the plaintiff was required either to complete the building or to hand over the property, documents to the defendant's advocates. However, it can be construed that such a date was to be any date before the first payment of the loan was due to be made to the plaintiff which in this case was March 1982, and the plaintiff did not therefore commit any breach of the contract as alleged in paragraph 3 of the defence.

Mr Muite also contends that in view of the number of points raised in the defence, this matter cannot be disposed of summarily under Order XII r.6. Mr Lakha has submitted this is a simple matter. He contends that the defence filed by the defendant is bogus, that it discloses no reasonable defence or answer in law to the plaintiff's claim, that the offer pleaded in paragraph 3 of the plaint, the acceptance thereof, the payment made thereunder as pleaded in paragraph 4 of the plaint have not been denied by the defendant in its defence and that such non denial amounts to admission of the facts contained in paragraphs 3 and 4 under Order VI r. 9. In support of this procedural point, both counsel cited the case of *Nidaf Establishment v Maize and Produce Board* HCCC No 480 of 1982 (unreported) where Sachdeva J stated *inter alia*:

"It is the plaintiff's first contention that the defence together with the correspondence exchanged between the parties are all sufficient and clear admissions by the defendant of the facts contained in the plaint, and the plaintiff is, therefore, entitled to judgment on the said admissions of facts. Mr Lakha who appears with Mr Makhecha for the plaintiff at the hearing of the motion submits that if the facts are admitted in the pleadings and / or in the correspondence the plaintiff is entitled to an interlocutory judgment if in law there is no valid defence to the plaintiff's claim. The plaintiff need not wait for a full trial involving unnecessary delay and expense when nothing material is going to turn up thereat. In support of this procedural point Mr Lakha relied on the judgment of Simpson, J (as he then was) in HCCC 1243/80 *Sachania & Another v Cassam & Another* (as yet unreported) wherein he stated at pages 8 and 9 –

'The question now to be considered is whether or not in view of the foregoing the plaintiffs are entitled to

judgment on this application. Mr Nowrojee submitted that the defendants were entitled to have not only matters of fact but also questions of law dealt with in the normal process, that is at a hearing. To strike out the defence would I think be wrong having regard to the matters of law pleaded therein which raises triable issues. These questions however have now been fully argued. As Lord Denning said in *Tiverton Estates v Wearwell Ltd* [1974] 1 All ER 209 at p. 213.

'These courts are masters of their own procedure and can do what is right even though it is not contained in the rules ... If the point depends on the correct interpretation of correspondence, then the court can decide the matter then and there without sending it for trial. There is no discussion that the trial would be merely a repetition of the discussion on the summary procedure.'

He was of course referring to applications for summary judgment under the English equivalent of our O. XXV but I see no reason why an application under O. XII r. 6 should not be similarly treated. Admissions have been made in the defence which, as I have held, having regard to the construction of the agreement for sale and the law in relation to time being of the essence of a contract entitle the plaintiff to judgment. Although it would be illogical to give judgment on admissions contained in the defence and at the same time strike out that defence it does appear to me that the defence at least in part tended to prejudice, embarrass and delay the fair trial of the action.

On appeal, the above decision was affirmed by the Court of Appeal in its Civil Appeal No 63 of 1981, *Cassam & Another v Sachania & Another* (as yet unreported). At page 3 *et. Seq.* Potter JA, stated in his judgment –

"In his Ruling Simpson, J (as he then was) observed that the facts material to the application for judgment were expressly or impliedly admitted in the defence and that the defendants relied on matters of law. Mr Lakha, who appeared for the appellants/defendants did not dissent from this observation. He put his case this way. The Judge's discretion to grant judgment on admissions of facts under the Order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment. It is far from being a plain case where one has to resort to the interpretation of documents. Once a case raises points of law it falls outside the ambit of the Order. It made no difference whether the points of law had been fully argued or not. In this case the defendants raised points of law which disentitled the plaintiffs to judgment under the Order. The points of law which Mr Lakha relied upon were:-
(1) Were the defendants / appellants entitled to rescind the agreement upon the failure of the plaintiffs / respondents to pay the balance of the purchase price on or before 31st January, 1980"
(2) Was time of the essence of the contract in respect of the payment of the balance of the purchase price"
(3) Was payment made by the plaintiffs / respondents in accordance with the terms of the contract"

Order XII rule 6 provides as follows:-

'6. Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just.

It is well established on the authorities that admissions of fact must be clear and sufficient before they will entitle a plaintiff to judgment. See *Ellis v Allen* [1914] 1 Ch D 904, *Technistudy Limited v Kelland* [1976] 3 All ER 632; *Rankine v Gaiton* [1979] 2 All ER 1185. The learned judge did not accept the submission that a point of law takes a case out of the ambit of Order XII r. 6. In his Ruling he said:-

‘Admissions have been made in the defence which, as I have held, having regard to the construction of the agreement for sale and the law in relation to time being of the essence of a contract entitle the plaintiff to judgment.’

The learned judge referred to *Triverton Estates Ltd v Wearwell Ltd* [1974] 1 All ER 209. In that case the vendors of a leasehold property having decided not to go ahead with the sale, the purchasers registered a caveat at the Land Registry alleging the existence of a contract of sale. The vendors commenced an action seeking *inter alia* an order vacating the caution, and on an interlocutory motion obtained an order vacating the caution. On appeal the Court of Appeal held that the court had power on motion under s 82(1) of the Land Registration Act 1925 to order that a caution be vacated when it was shown that the caution ought not to have been made. The power had been properly exercised since, by failing to adduce any documents sufficient to satisfy s 40(1) of the Law of Property Act 1925, the purchasers had failed to make out a *prima facie* case that there was an enforceable contract.

At page 213 et seq. Lord Denning M R said:-

‘1. The Procedural point

Counsel for the purchasers took a procedural point. He urged that the court could not, or at any rate should not use a motion so as summarily to vacate an entry before trial. He said that a party who relied on the absence of writing had to plead the Statute of Frauds; and that, on discovery, a memorandum might be found sufficient to satisfy the statute. The only way of dealing with the matter was, he said, by a trial; and, if need be, by a speedy tiral.

I reject this procedural point. The entry of a caution was a dark shadow on the property. It paralyses dealings in it. No one will buy the property under such a cloud. If a caution is entered when it ought not to be, the court can order the register to be rectified by vacating the entry; see s 82 (1) (a) and (b) of the Land Registration Act 1925; just as it can vacate a land charge under the Land Charges Act 1925; s 10 (8): see *Heyweed v BDC Properties Ltd.* The party aggrieved is not confined to his remedy in damages under s 56 (3) of the Land Registration Act 1925. I know that the Rules of the Supreme Court do not prescribe any summary procedure such as Ord 14 does for judgment or Ord 86 for specific performance. But that is no obstacle. These courts are masters of their own procedure and can do what is right even though it is not contained in the rules. If it is drawn to the attention of the court, by affidavit or otherwise, that a caution has been entered when it ought not to be, then the court can order it to be vacated forthwith. In particular, if the cautioner does not adduce any writing sufficient to satisfy the Statute of Frauds (now s 40 of the Law of Property Act 1925), the court can order the entry to be vacated. If the point depends on the correct interpretation of correspondence, then the court can decide the matter then and there without sending it for trial. There is no point in going formally to trial when the discussion at the trial would be merely a repetition of the discussion on the summary procedure. We have often decided cases under RSC Ord 14 when the only point is one of construction, even though it is a difficult and arguable point. So also under RSC Ord 86, in regard to which Russel LJ said in *Bigg v Boyd Gibbins Ltd:*

“... if one has simply a short matter of construction, with a few documents, the learned judge on this summary application should simply decide what is in his judgment the true construction applicable to applications Under Order III rule 6. I agree. In my view it is *prima facie* applicable to all interlocutory proceedings. But summary determinations are for plain cases, both as regards the facts and the law. An issue between the parties to an interlocutory application should not be decided at that stage unless the material facts are capable of being adequately established and the law is capable of being fully argued without the benefit of a trial.”

The relevant observations in *Tiverton Estates* case have been quoted by Potter JA at length hereinabove and I need not repeat them. In his judgment in the same Civil Appeal No 63 of 1981 Hancox Ag J observed, *inter alia,* at page 4 -.

'Accordingly, having reached a conclusion on those matters, and the facts being admitted, the Judge, applying Lord Denning's decision in *Tiverton Estates v Wearwell* 1974 1 AER at p 213, in effect said that there was no need to go through the "futility" as Law JA said in the course of this appeal) of a trial as there was nothing left to be decided. That course seems to me to fit exactly the term of O.XII r.6.
'Any party may ... apply to the Court for such judgment or order as upon such admission he may be entitle to...'

That means such judgment as he is entitled to in law.

Again, Hancox Ag J stated at page 5 of his judgment.

'It is not sufficient to flourish an issue of law before the Court and say that it cannot be decided there and then, and until the trial.

Here the defendant, as submitted by Mr Lakha, does not deny that there was an offer and acceptance thereof as averred in paragraphs 3 and 4 of the plaint. Its defence in effect is that there were other terms and conditions in addition to those contained in its letter of offer dated 9.10.1980, which were based on discussions and correspondence between the parties prior to the offer and as stated in paragraph 5 of the defence.

I have held above that the defendant cannot introduce evidence of discussions and correspondence which allegedly preceded the offer and that any variation of that offer could be made only by mutual agreement of both parties and that there was no such mutual agreement for the variation of the terms and conditions. That leaves only two simple issues for the determination by the Court. They are first whether or not there was a binding contract between the parties in terms of the offer of 9.10.80 and secondly whether the defendant was entitled to rescind it vide its letter dated 9.9.81 on the ground stated therein. The defendant has not denied that it made the offer which was accepted by the plaintiff as averred in paragraphs 3 and 4 of the plaint. It is therefore deemed to have admitted these averments. There can hardly be any doubt that the ground on which the contract was terminated on 9.9.81 has no substance at all in it.

I am satisfied that the material facts in this case have been adequately established and the law has been fully argued without the benefit of a trial. There will be no point in going formally to trial when the discussion at the trial would be merely a repetition of the discussion on this summary procedure.

Having regard to all the circumstances of the case I am satisfied that the plaintiff has properly brought this application and has proved his case. I, therefore, enter interlocutory Judgment in favour against the defendant as prayed in prayers 1, 2, and 4 of the Notice of Motion.

Dated and Delivered at Nairobi this 9th Day of January, 1984

P.S. BRAR

.....

JUDGE

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