



Case Number:	Civil Case 977 of 1999
Date Delivered:	25 May 2006
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Commercial Courts Commercial and Tax Division)
Case Action:	Judgment
Judge:	Philip John Ransley
Citation:	Giro Commercial Bank Limited v Shreeji Enterprises (K) Limited & 3 others [2006] eKLR
Advocates:	-
Case Summary:	COMMERCIAL LAW – bills of exchange – promissory notes between two parties were discounted to a third party – where there was default of payment on the notes - applicable principles – whether failure to give a notice of dishonor on the note was unlawful
Court Division:	-
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Allowed
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	3,000,000
The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.	

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 977 of 1999

GIRO COMMERCIAL BANK LIMITED.....PLAINTIFF

VERSUS

SHREEJI ENTERPRISES (K) LIMITED1ST DEFENDANT

GNANJIVAN SCREWS & FASTENERS LTD.....2ND DEFENDANT

ANDREW DOUGLAS GREGORY3RD DEFENDANT

ABDUL ZAHIR SHEIKH4TH DEFENDANT

JUDGEMENT

The Plaintiff formerly Giro Bank Limited by virtue of a Deed of Assignment dated the 10.12.98 became the beneficiary of all of the assets of a Bank called Commercial Bank Limited (C.B.L.).

Amongst the assets transferred were a series of Promissory Notices drawn by the 1st Defendant in favour of the 2nd Defendant for value received. The sum total of the bills is Kshs.3 million.

The Promissory Notes were discounted by C. B. L. which wrote to the 1st Defendant on the 31.7.1998 asking for payment within 21 days of Kshs.2 million in respect of four bills for Kshs.500,000/= each and asking that the further bills totaling Kshs.2 million in all were paid on due date. It also claimed accrued interest at 48%.

The 1st Defendant in its Amended Defence denied acceptance or payment of the bills and averred that the same could not have happened since there was no supply of goods as intended for the Bills. It disputed interest at 48%.

In evidence a director of the Defendant DW1 stated that the Bills were issued in respect of goods to be delivered to them in the sum of Kshs.2,756,000/= which they however, paid for in cash to the 2nd Defendant. He denied any knowledge that the Bills were discounted to C.B.L. and contended he was a stranger to any transaction between the 2nd Defendant and the Plaintiff.

In submissions the 1st Defendant relied on the case of **Lick Barrow & another v. Mason & Others [1775-1802] ALL ER**. Ashhust CJ stated:-

“We may lay it down as a broad general principle that whenever one of the two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.”

It was the 1st Defendant’s submission that the loss occasioned to the Plaintiff was occasioned by its own actions.

In reply the Plaintiff relied in the case of **African Overseas Trading Co. v Bhagwanji Harjiwan (1960) E.A. 417** where it was held:-

“in view of the terms of Section 52(3) and Section 90 (2) of the Bills of Exchange Ordinance it was not necessary for notice of dishonour of the promissory note to be given.”

In this case the 1st Defendant did not get back the promissory notes it had given to the 2nd Defendant. A Promissory Note is like a financial time bomb in that the maker remains liable on it until such time as he receives back the promissory notes and cancels the same.

The Plaintiff claims interest at 48% as this was the rate charged on the 2nd Defendant's bill discounting facility with the Plaintiff. Although the Plaintiff in its submissions says the 2nd Defendant did not dispute this rate, the 1st Defendant did so in paragraph 5A of its Amended Defence.

The 1st Defendant did not indemnify the Plaintiff nor has it been alleged that it did so in respect of monies due from the 2nd Defendant.

There is no contractual nor statutory obligation on the 1st Defendant to pay interest and I, therefore, give judgement for the sum of Kshs.3 million with interest thereon at court rates from the date of the filing of the Plaintiff and the costs of the suit.

Dated and delivered at Nairobi this 25th day of May, 2006.

P. J. RANSLEY

JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)