



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 1815 of 2001**

**PABECO ENTERPRISES LTD.....**  
**.....PLAINTIFF**

**VERSUS**

**HI-TEN CREATIONS LTD.....1<sup>ST</sup>**  
**DEFENDANT**

**SHANTIBHAI SHAH.....2<sup>ND</sup>**  
**DEFENDANT**

**HITES SHANTIBHAI SHAH.....3<sup>RD</sup>**  
**DEFENDANT**

**ATULLA SHANTIBHAI SHAH.....4<sup>TH</sup>**  
**DEFENDANT**

**RULING**

The defendants by way of this Chamber Summons brought under Order XXV Rule 1, 4, 5, 6 and 7 of the Civil Procedure Rules seeks orders that the plaintiff do provide security for costs up to Shs.145,000/= or such other amount as may be ordered by the court and that in default the defendants be at liberty to apply for the dismissal of the suit.

The application is based on the ground that the plaintiff is a limited liability company and has ceased trading and has not filed its annual returns and that the defendants are apprehensive that the plaintiff will not be able to meet any order for costs which may be made against it.

The application is also supported by an affidavit sworn by HITEN SHANTIBHAI the 3<sup>rd</sup> defendant on behalf of the other defendant in which he avers that the plaintiff filed this suit against the defendants on 24<sup>th</sup> October 2001; that the plaintiff company ceased trading since 2000 and has not filed its annual returns at the Companies Registry; that the plaintiff does not have any known assets; that the defendants are apprehensive that the plaintiff will be unable to meet any order for costs which may be made against it.

The hearing of this application proceeded ex parte due to non-appearance of the respondent. The hearing date of this application was taken ex parte and there was an order directing that the plaintiff be served but although counsel for the defendants informed the court that service was effecting, there is no return of service filed to that effect.

This claim arises out of 23 unpaid promissory NOTES AMOUNTING TO Shs.5,690,060.35. The plaintiff in his plaint avers that on or about the year 1998 the defendants requested the plaintiff to advance monies to them amounting to Shs.5,690,060.35, that the plaintiff did concede to the request and the 1<sup>st</sup> defendant was advanced monies amounting to Shs.5,690,060.35; that it was agreed inter alia that the defendants do sign and execute promissory notes in favour of the plaintiff which were placed with HABIB AFRICAN BANK for collection and payment and the same were entered in the Banks register with all the details; that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants did give their personal guarantees against the promissory notes by duly signing at the back of the promissory notes and that the defendants did execute and sign the said promissory notes all of which were signed but upon presentation and collection were dishonoured and Notice of Dishonour was duly issued to the defendants save for promissory notes amounting to Shs.1,030,000/= which were paid.

They denied that they requested the plaintiff to advance them monies as alleged in paragraph 5 of the plaint or at all, they deny to have been advanced the said amount of Shs.5,690,060.35. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants deny making any promissory notes in favour of the plaintiff or giving their personal guarantees against the promissory notes as alleged in the plaint. But without prejudice to the foregoing the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants aver that if they signed at the back of the alleged promissory notes, it was merely an endorsement and the same was not meant and did not constitute them guarantors in law. The 1<sup>st</sup> defendant in answer to paragraph 7 of the plaint avers that it did not make the notes sued upon as there was no resolution authorizing the issue of the said notes and neither were the alleged notes issued by the Directors of the 1<sup>st</sup> defendant company under zeal. That without prejudice to the foregoing, the 1<sup>st</sup> defendant further avers in the alternative that it made and delivered the alleged promissory notes at the request of K.M. PATEL and for his accommodation in order that he could only discount them to the order of his bank HABIB AFRICAN BANK LTD. That the said K.M. PATEL was not to discount them or negotiate them to anyone else and that the plaintiff gave consideration for the alleged promissory notes.

The said promissory notes were signed by the defendants a fact which is admitted although they allege that the signing of the promissory notes at the back was merely an endorsement and the same was not meant and did not constitute them guarantors in law.

The plaintiff's suit raises trial issues and this coupled with the fact that defendants did not avail documentary evidence to show that the plaintiff has ceased trading makes the defendants application lack in merit and the same is dismissed with no order as to costs.

Dated and delivered at Nairobi this 13<sup>th</sup> day of September 2006.

J.L.A. OSIEMO

**JUDGE**