

17

IN THE COURT OF APPEAL  
AT NAIROBI

Coram: Cockar, Muli & Akiwumi, J.J.A.

CIVIL APPEAL NO. 55 OF 1993

BETWEEN

KING WOOLEN MILLS LTD (formerly known as  
MANCHESTER OUTFITTERS SUITING DIVISION LTD) ..... 1ST APPELLANT

GALOT INDUSTRIES LTD. .... 2ND APPELLANT

AND

M/S KAPLAN & STRATON ADVOCATES ..... RESPONDENT

(Appeal from the ruling and order of the High Court of  
Kenya at Nairobi (Mr. Justice Shields) dated 25th  
February, 1993.

in

H.C.C.C. NO. 279 OF 1993

\*\*\*\*\*

JUDGMENT OF MULI, J.A.

The appellants, the Manchester Outfitters Suiting Ltd. and Galot Industries, are limited liability companies incorporated and registered in Kenya and carrying on the businesses of manufacturing clothes and property developers respectively. The former is a subsidiary company of the latter hereinafter collectively referred to as "the borrowers" where the context so requires. The respondents are a prominent firm of advocates practicing law in Kenya and based in Nairobi.

The 1st appellant negotiated successfully a loan from the Standard Merchant Bank Ltd. (The London Bank), through the East Africa Acceptances Ltd; another company incorporated in Kenya, (The Acceptances), to the tune of 1.3 million Deutsche Marks and

1.05 million Swiss Francs. The loan was guaranteed by the Acceptances Ltd. hereinafter collectively referred to as "the lenders" where the context so requires. The names of the 1st appellant and the Acceptances appear to have changed but nothing turns on this.

The respondents were initially retained to act for the London Bank and the Acceptances during the negotiations and preparation of the loan agreement and security documents.

The 1st appellant wrote to the respondents on 9th October 1981, as follows:-

"M/S Kaplan & Stratton,  
Advocates  
P.O. Box 40111  
NAIROBI

ATTN: MR. J.M. KIBUCHI

Gentlemen,

We have negotiated a medium term loan for Shs.12.00 million, from Standard Chartered Bank, (Merchant Banking Division), through East African Acceptances Ltd, Nairobi.

The loan is secured against an unconditioned guarantee from East African Acceptances Ltd (EAA). In turn we have agreed to a first legal charge on our property at Athi River, and a Debenture on the Assets of the company in favour of East African Acceptances Ltd.

The loan documents from Standard Chartered Bank have now been received by East African Acceptances and they will shortly be instructing their advocates to draw up the legal charge and debenture. As you are aware, the property in question is plot No. 2, of the land at Athi River. Since the main title and Sub-titles are under registration, we would request you to confirm to East African Acceptances Ltd, as under.

1. That you are acting on our behalf through