



Alliance One Tobacco (K) Limited & another v Eastobac Kenya Limited (Civil Case E006 of 2022) [2023] KEHC 1212 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E006 OF 2022
RB NGETICH, J
FEBRUARY 23, 2023**

BETWEEN

ALLIANCE ONE TOBACCO (K) LIMITED 1ST PLAINTIFF

ALLIANCE ONE TOBACCO (U) LIMITED 2ND PLAINTIFF

AND

EASTOBAC KENYA LIMITED DEFENDANT

RULING

1. The application before the court for determination is dated May 17, 2022. It seeks the following orders:
 - a. Judgment on admission be entered against the Defendant as prayed in the plaint.
 - b. Costs be awarded against the Defendant.
2. The grounds of the application are that the claim against the Respondent is for among others, a principal sum of USD 468,805.30/= interest of USD 197,422.85 as at March 31, 2022; the defendant has admitted that there is an outstanding debt and has sought to be allowed to pay the amount due. The admission is contained in the witness statement of Richard Chiromo, the Defendant's managing director; that the admission is clear, plain and unequivocal and deliberate to bind the Defendant.
3. The application is supported by the affidavit of Alan Baguma sworn on May 17, 2022. He disposes that the initial amount owed by the Defendant was USD 671,193.40 as at October 31, 2020 as per the Deed of Settlement dated February 9, 2021 and out of the outstanding amount, the Defendant has repaid a small amount of the money.
4. He further disposes that the Defendant *vide* a letter dated November 23, 2021 proposed a revised payment schedule but failed to honor the payment; that as per the witness statement of Richard



Chiromo, he seeks to be allowed to repay the outstanding debt. The applicant urges this court to enter judgment on admission in the interest of justice.

5. In response to the application, the defendant filed a replying affidavit sworn by Richard Chiromo on July 15, 2022. He disposes that the application is misconceived and should be dismissed; he averred that the defendant has categorically denied the allegations raised in the plaint; that the case raises triable issues and should be decided on merit and the application is an attempt to dismiss the matter prematurely; that the deed of Settlement is null and void and urged this court to give the parties a fair hearing.
6. The application was canvassed through written submissions

Applicant's Submissions

7. Counsel for the applicant submitted that admissions are recognized under Section 61 of the *Evidence Act* and Order 13 of the *Civil Procedure Rules*. Counsel cited the case of *Isuzu East Africa Limited (Formerly General Motors East Africa Limited) Vs Nairobi City County Government* (2020) eKLR where the court held as follows: -

“Section 61 of the *Evidence Act* applies to whether facts ought to be proved in the conduct of civil proceedings. In instances where parties have admitted facts at the hearing and in writing agreed on admitted facts or by law deemed to be admitted facts based on their pleadings, there will be exemption from proving these facts in the proceedings”

8. Counsel for the applicant submitted that the deed of settlement was entered voluntarily as per clause 9 and the defendant has not disputed the various correspondences between the parties on the repayment proposals.
9. Counsel urged the court to look at the Defendant witness statement by Richard Chiromo at paragraphs 8,17, 19, 20, 22 and 24 and find the debt is admitted by the Defendant and the assertion by the Defendant that the deed of Settlement was through coercion is unfounded and deceitful, the defence is a mere denial and urged the court to allow the application.

Defendant's Submissions

10. Counsel for the defendant filed submissions dated September 14, 2022 and submitted that this matter raises triable issues that should be allowed to go for full trial; that the statutory law governing judgment on admission is to be found in Order 13 of the *civil procedure Rules* 2010. The power of the court to enter judgment on admission is discretionary. Counsel cited the case of *Express Automobile Kenya Limited Vs Kenya Farmers Association Limited & Anor* (2020) eKLR where the court held as follows:-

“The court is bound to examine the facts and prevailing circumstances keeping in mind that a judgment on admission is a judgment without trial which permanently denies a remedy to the sued party by way of an appeal on merits.”

11. Counsel further submitted that the court ought to exercise caution while entering judgment on admission to avoid depriving the Defendant an opportunity to present their evidence.
12. Counsel further submitted that the defence and replying affidavit filed by Richard Chiromo contests the debt; there are critical issues that must be interrogated further and urged this court to dismiss the application with costs



Analysis and Determination

13. I have considered grounds of the application and submissions filed and wish to consider the following: -
- a. Whether judgment should be entered on admission.
 - b. Who should bear the costs.
14. Order 13 Rule 2 of the [Civil Procedure Rules](#) which deals with judgment on admission provides as follows: -
- “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 admission she 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.”
15. The applicant sought for judgment to be entered against the Defendant for the outstanding amount of USD 671,193.40; that judgment be entered against the Defendant for the admitted amount. On the other hand, the defendant denies any admission and contends the deed of settlement was through coercion.
16. The defence filed on May 11, 2022, denies all the contents of the plaint and challenges the interest charged.
17. In the case of [Guardian Bank Limited Vs Jambo Biscuits Kenya Limited](#) [2014] eKLR the court held as follows: -
- “The principle applicable in judgment on admission is that the admission must be very clear and unequivocal on a plain perusal of the admission. The admission in the sense of Order 13 Rule 2 of the [Civil Procedure Rules](#) is not one which requires copious interpretations or material to discern. It must be plainly and readily discernible. “
18. Further the court is vested with the discretionary power to grant or refuse to enter judgment on admission as set out in the case of [Cassam Vs Sachania](#) [1982] KLR 191 where it was held stated as follows: -
- “Granting judgment on admission of facts is a discretionary power which must be exercised sparingly in only plain cases where the admission is clear and unequivocal... Judgment on admission cannot be granted where points of law have been raised and where one has to resort to interpretation of documents to reach a decision.”
19. On perusal of the deed of settlement dated February 9, 2021, I note that it is duly signed by the defendant. I wish to highlight the following clauses.
- Clause 9 “clearly indicates the deed was entered voluntarily without duress.”
- Clause 4 “the defendant confirmed it was indebted to the applicant in the sum of USD 671,193.40 as at October 30, 2020 and as per the proposed mode of repayment, monies ought to have been paid by June 30, 2021.



20. I also note that the defendant wrote a letter dated November 23, 2021 to the 1st Plaintiff on the proposed mode of repayment and the letter was signed by Richard Chiromo on behalf of the Defendant.

21. I also note that the witness statement of Richard Chiromo dated May 11, 2022 and paragraph 20 state as follows: -

“We pray that this Honourable court allow us to pay the outstanding debt in a manner that will not bankrupt our business and render hundreds of our employees jobless”

19 “Some of the invoices are as current as 2021 and we should therefore be allowed time to settle them.”

17 “Despite all these challenges we have been consistently making payments to the Defendants and the latest one being on March 29, 2022 just before the filing of this suit.”

22. From the above excerpts, there is no doubt that the defendant was admitting the debt and making proposal to pay. The Respondent despite arguing that the Deed of Settlement was done under duress, there is no prove of any act of duress; and other correspondences between the applicant and the Respondent, the witness statement by Richard confirms the Respondent’s indebtedness to the Applicant. There is no denial of the debt in the correspondences as filed; the Respondent instead requested for time to pay the outstanding debt in instalments without jeopardizing its business operations.

23. In my view, the Respondent clearly and unequivocally admitted the debt in a plain language that was understood by all; the defendant cannot there be allowed to deny the debt, despite sending proposals on the repayment of the debt.

Final Orders

- i. The application dated May 17, 2022 is hereby allowed.
- ii. Judgment is entered for Plaintiff against the Defendant on admission in the sum of USD 671,193.40.
- iii. Costs of the application and suit to the Applicant/Plaintiff.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 23RD DAY OF FEBRUARY, 2023

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RACHEL NGETICH
JUDGE

