



**Surgilinks Limited v Njimia Pharmaceuticals Limited (Civil Case E112 of 2023)  
[2023] KEHC 21929 (KLR) (Commercial and Tax) (24 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21929 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E112 OF 2023  
DAS MAJANJA, J  
AUGUST 24, 2023**

**BETWEEN**

**SURGILINKS LIMITED ..... PLAINTIFF**

**AND**

**NJIMIA PHARMACEUTICALS LIMITED ..... DEFENDANT**

**RULING**

1. The Plaintiff's case against the Defendant set out in the Plaint dated March 20, 2023 is for Kshs 22,077,882.74 for pharmaceutical goods sold and delivered to the Defendant at the Defendant's request between February 23, 2012 and January 29, 2021.
2. The Plaintiff has now moved the court for judgment on admission in its application dated March 20, 2023 on account of the Defendant's admission of indebtedness. The application is supported by the affidavit and further affidavit of Paul Metho, the Plaintiff's Credit Control Manager, sworn on March 20, 2023 and May 17, 2023 respectively. The Defendant opposes the application through the replying affidavit sworn on May 4, 2023 by its managing director, Dr. Daniel Wachira. The parties have filed written submissions in support of their respective positions.
3. The grounds upon which the Plaintiff's motion for judgment is based are *inter alia* that the Defendant has made a clear admission of its liability for indebtedness to the Plaintiff, voluntarily and consciously by both issuing post-dated cheques in part settlement of the debt and by way of e-mail admitting the existence of a pending debt and apologising for the delay in settling the same.
4. The Defendant filed its defence denying the Plaintiff's claim on the grounds that the Plaintiff has failed to give particulars including local purchase orders, invoices and delivery notes to support its claim. It averred that the communications produced by the Plaintiff were on a "without prejudice" basis and ought to be expunged.



5. The application before the court is made under Order 13(2) of the [Civil Procedure Rules](#) which deals with judgment on admission and provides as follows:

13 Any party may at any stage of a suit, where admission of facts has been made,  
(2) 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.

6. The threshold for judgment on admission is that the admissions have to be plain and obvious. This was elaborated by the Court of Appeal in [Choitram v Nazari](#) [1984] KLR 327 as follows:

For the purpose of order XII rule 6, admissions can be express or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning. Much depends upon the language used. The admissions must leave no room for doubt that the parties passed out of the stage of negotiations onto a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions by analysis. Indeed, there is no other way, and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties. [Emphasis mine]

7. The Defendant is correct to point out the Plaintiff has not produced the local purchase orders, invoices and delivery notes to support its case for summary judgment. While this may be necessary to prove a case for goods sold and delivered, whether the court finds in favour of the supplier must depend on the circumstances of the case. In this case, there is no dispute that the parties were in a business relationship where the Plaintiffs supplied pharmaceutical goods to the Defendant. The fact of the relationship is proved by the correspondence exchanged between the parties through letters and emails and the fact that the Defendant issued cheques to the Plaintiff.
8. The question is whether the Defendant is indebted to the Plaintiff to the amount claimed in the Plaintiff. The Plaintiff has produced a summary of the invoices and a statement of account showing that it supplied goods between February 23, 2012 and January 29, 2021 and that it is owed Kshs 21,039,989.34. It has also produced demand letters and emails and copies of cheques issued by the Defendant. All this evidence by itself may not be sufficient to make out a case for judgment on admission but the Plaintiff produced a letter dated February 25, 2022, signed by both parties, where the Defendant admitted to owing Kshs 22,080,793.93. The said letter expressly stated that the Defendant owed the Plaintiff the said amount as at December 31, 2021.
9. I hold that the admission contained in the letter dated February 25, 2022 is clear and unequivocal and being an admission of indebtedness, it need not be supported by each and every local purchase order, invoice and delivery note. Although the amount claimed in the Plaintiff is Kshs 22,077,882.74 which differs from the amount admitted, I do not consider the difference fatal to the claim as the amount claimed is slightly less than what was admitted and the Plaintiff is only entitled to what it has pleaded in the Plaintiff. Accordingly, judgment will be entered for the amount in the Plaintiff.



10. As to whether the Plaintiff is entitled to interest at 3% per month from the date of each invoice, I find that this aspect of the claim has not been established as it is not part of the admission. It shall therefore proceed for trial.
11. For the reasons I have set out, I allow the Plaintiff's application dated 20.03.2023 on the following terms:
  - a. Judgment be and is hereby entered for the Plaintiff against the Defendant for Kshs 22,077,882.74.
  - b. The Defendant shall pay costs of the application.
  - c. The issue of interest of the principal sum shall proceed for trial.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF AUGUST 2023.**

**D. S. MAJANJA**

**JUDGE**

