



**Lori Systems v Multiple Solutions Limited (Civil Case E139 of 2021)  
[2022] KEHC 13054 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13054 (KLR)

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

**CIVIL  
CIVIL CASE E139 OF 2021**

**JK SERGON, J**

**SEPTEMBER 23, 2022**

**BETWEEN**

**LORI SYSTEMS ..... APPLICANT**

**AND**

**MULTIPLE SOLUTIONS LIMITED ..... RESPONDENT**

**RULING**

1. The plaintiff/applicant in this instance has brought the notice of motion dated October 29, 2021 supported by the grounds set out in its body and the facts deponed in the supporting affidavit. The applicant sought for the order that judgment on admission be entered for the plaintiff against the defendant as prayed in the plaint on the defendant's own admission of indebtedness to the plaintiff together with costs of this application.
2. The respondent opposed the motion by filing the replying affidavit sworn on January 24, 2022.
3. I have considered the grounds laid out on the body of the motion; the facts deponed in the affidavits supporting and opposing it; and the rival submissions and the authorities cited therein.
4. In his affidavit filed in support of the motion dated October 29, 2021, Mr Andrew Nyale the general manager to the plaintiff/applicant company, stated that the plaintiff/applicant's claim against the defendant as drawn in the plaint is a liquidated claim of USD 253,200 and Kshs 35,622,243.80/= being monies owed for unpaid services and that the defendant/respondent made an admission that it is indebted to the plaintiff/applicant.
5. The applicant submitted that the respondent herein through its advocates made an admission of their indebtedness to the applicant vide letters dated September 27, 2021 and October 12, 2021 which were



not written on a “without prejudice” basis therefore their contents are admissible in the circumstances of this case.

6. The applicant on this relied on the case of *Synergy Industrial Credit Limited v Ox plus International Limited & 2 others* (2021) eKLR ,where Mativo J pronounced himself thus:

“The purpose of order 13 rule 2 is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim. The rule only secures that if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment, he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined.”

7. In response, the respondent stated that the admission is not absolute and it was committed to settling the claimed amount subject to reconciliation of accounts and was also to be influenced by different circumstances like the issue of cash flow.

8. The respondent submitted that the applicant acted in bad faith by taking advantage of the correspondences between the parties during to seek for judgment and that the applicant was never interested in settling the matter out of court as they turned down all the offers that the respondent made in an effort to settle the claim. On this the respondent relied on the case of *Endebess Development Company Limited v Coast Development Authority* (2018) eKLR where the court held *inter alia* that:

“In *Cassam v Sachania* [1982] KLR 191 the court held that:

“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.” (emphasis added).

9. It is the respondent’s submissions that if the court allows this application then they will be condemned unheard since judgment on admission without trial which permanently denies any remedy to them by way of an appeal on merits and will be tantamount to sacrificing justice and will run counter to the provision of article 159(2) of the *Constitution* of Kenya.

10. The law applicable is found in order 13 rule 2 of the *Civil Procedure Rules 2010*, which reads thus:

“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 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.”

11. Further in the case of *D T Dobie & Company Kenya Ltd v Joseph Mbaria Muchina*, CA No 37 of 1978 it was held that:

“if a suit has shown a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”



12. It is the applicant's case that the defendants/respondents through the letters dated September 27, 2021 and October 12, 2021 had admitted owing applicant, and that the said letters were not on a without prejudice basis therefore making their content admissible. The respondent on the other hand stated that the applicant took advantage of the correspondences between the parties during negotiations to seek for judgment.
13. Considering the huge sums of money involved in this matter; and the fact that the communication and documents relied on have been disputed and that judgment on admission cannot be granted where one has to resort to interpretations of documents to reach a decision.
14. In the cases of *Choitram v Nazari* [1984] KLR 327 and *Cassam v Sachania* ((1982) KLR 191, already referred to by counsel for the plaintiff/applicant. On this he contended that admissions have to be plain and obvious. In considering one, the court does not have to go into the merits of the case or engage in a protracted analysis of documents. He further referred to case of *D. T Dobie & Co Kenya Ltd v Muchina* [1982] KLR to reiterate this position.
15. Furthermore, the court cannot exercise power of giving judgment on admission under order 13 rule 2 where the defendants have raised objections which go to the very root of the case. Admission of a fact has to be clear from the facts and it should not be left to interpretative determination of court. The court has to exercise caution while passing a decree on admissions to see that the suit is not collusive meant to defeat law. Even if there is an unequivocal admission by a party but the passing of a judgment would work injustice on it, judgment could be declined.
16. The upshot is that the application dated October 29, 2021 lacks merit and is dismissed with costs abiding the outcome of the suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent

