



**Friendline Holdings Limited v Brand Imports (Africa) Limited (Civil Suit E116 of 2021)
[2021] KEHC 437 (KLR) (Commercial and Tax) (17 December 2021) (Judgment)**

Neutral citation: [2021] KEHC 437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E116 OF 2021
MW MUIGAI, J
DECEMBER 17, 2021**

BETWEEN

FRIENDLINE HOLDINGS LIMITED APPLICANT

AND

BRAND IMPORTS (AFRICA) LIMITED RESPONDENT

JUDGMENT

1. NOTICE OF MOTION

The Applicant filed a Notice of Motion Application dated 12th April 2021 for orders that;

1. The Court enters judgment on admission for the Plaintiff against the Defendant for Kshs. 63,289,564.58
2. The Court enters judgment on express admission for the Plaintiff against the Defendant of Kshs. 53,421,778.10.

2. Which Application was supported by the sworn Affidavit of Nuh Hassan dated 9th April 2021 and based on the grounds that;

- a. The Defendant has admitted indebtedness of the amount claimed in the Plaintiff from a cursory perusal of the documents before court.
- b. The deliberate delay in payments necessitated the parties to conclude a Debt Settlement Agreement dated 20th February 2020 wherein the Defendant acknowledged the debt of Kshs.63, 289,564.58 and agreed on a settlement arrangement. (Marked NH1 – Debt Settlement Agreement dated 20th February 2020)



- c. In the alternative; the Defendant, in its Statement of Defense dated 17th March 2021 has expressly admitted that it owes the Plaintiff/Applicant Kshs. 53,421,778.10 instead of the amount claimed by the Plaintiff.
- d. At all material times leading to the institution of this suit the parties herein engaged in negotiation where letters were exchanged trying to resolve the matter. (Marked NH 2 – Letters pertaining to the negotiations)
- e. The admission is unconditional, unequivocal, plain and obvious and the grant of this application shall not prejudice the Defendant.

REPLYING AFFIDAVIT

3. The Application was opposed vide the sworn Affidavit of Dilpun Shah dated 3rd May 2021 and stated that;
 1. The amount sought by the Plaintiff is disputed and the Defendant is not indebted in the sum of Kshs.63, 289,564.58. as alleged or any other sum whatsoever being alleged as debt owed to the Plaintiff on its behalf.
 2. The Application is premature and only filed in the Plaintiff's apprehension that the Defendant Company will not file a Defense. The Defendant has a good Defense which raises triable issues to be determined upon full hearing.
 3. The debt settlement agreement was not an admission of the debt. The same is not legally binding or enforceable against any party as per paragraphs 5 and 6 of the Statement of Defense.
 4. The Present Application and prayers sought cannot be granted before the suit is heard and determined and allowing this Application is tantamount to concluding the suit prematurely.
 5. It is in the interest of justice that the present Application be dismissed with costs and the Court finds that no admission of debt by the Respondent.

APPLICANT'S SUBMISSIONS

4. The Applicant submitted that the Defendant's admission can be gleaned by a look at the pleadings on record, together with documents annexed, statements of witnesses and Affidavit filed. The Defendant never paid for the goods. To facilitate payment parties concluded a debt settlement agreement dated 20th February 2020 wherein the Defendant acknowledged and/or admitted the debt of Kshs. 63,289,564.58/= and set out the settlement arrangement of the same.
5. Further, the Applicant submitted that the Defendant admitted to Kshs.53, 421,778.10 in paragraphs 3,4,8, and 10 of its statement of defense dated 17th March 2021. Likewise, in the Defendant's letters dated 11th January 2021 and 19th January 2021, the Defendant admitted the indebtedness of Kshs. 53,421,778.10.
6. Madan JA in *Choitram v Nazari* [1984] eKLR rendered that admissions can be express or implied either on the pleadings or otherwise, e.g. in correspondence. Also, in *Guaranty Trust Bank (K) Limited v ES Solo Holdings Limited* [2021] eKLR admissions made on letters (correspondence) not on a without prejudice basis were considered proper and the court entered judgment on admission.

RESPONDENT'S SUBMISSIONS



7. The Respondent submitted that judgement 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. Paragraphs 3,4,8 and 10 of the Defendant's statement of defense does not amount to an admission. The amount as alleged by the Plaintiff of Kshs. 63 289 564.58 has been disputed and requires a reconciliation by both parties as the said debt sum is exaggerated and requires supportive evidence as is envisaged under Section 60 of the *Evidence Act*.
8. The plaintiff has failed to have the said debt account reconciled and a clear statement issued. Hence allowing the Application is tantamount to concluding the suit prematurely. In the case of *Postal Corporation of Kenya & Another versus Aineah Likumba Asiena & 11 others* C.A.No. 275 of 2014 the court held;

“Summary Judgement can only be resorted to in clearest of cases. If a respondent shows a bona fide triable issue he must be allowed to defend the suit without conditions.”
9. Further, the Respondent argued that the statement of defense raises triable legal questions which need to be addressed at a full hearing and thus the same cannot be struck out without judgement given on available evidence before the Court.
10. The Plaintiff/Applicant failed to demonstrate that there is an admission of facts which is unequivocal in the material facts and that the Defendant's defense raises triable issues which cannot be wished away and which must proceed to full trial for determination. This was envisaged in the case of *Cannon Assurance (Kenya) Limited versus Maina Mukoma* [2018] eKLR
11. It was the Respondent's submission that the disputed amount or the controversy surrounding the amount claimed/sums owed can only be determined after a full hearing. The Defendant reiterates that it is only when parties are accorded a full hearing and evidence submitted that the Court will be able to give an accurate figure of the actual amount of the claim herein.

DETERMINATION

12. After considering the pleadings filed by the parties herein and the submissions the issue for determination is whether judgment should be entered on admission?
13. Order 13 Rule 2 of the *Civil Procedure Rules* provides: -

“ 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 admissions 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.”
14. It is not in dispute that the Plaintiff supplied the Defendant with assorted goods. The Plaintiff averred that the worth of the goods was Kshs.66, 741, 722.65 and after deductions of withholding tax thereof the total amount owed by the Defendant totaled Kshs.63, 289, 564.58.
15. The Defendant on the other hand contended that the goods supplied and other costs owed to the Plaintiff amounted to Kshs.53, 421,778 and not Kshs.63, 289,564.58. This was in accordance with the Defendant's account at paragraph 4 of the Defense.
16. The Plaintiff approached the court for judgment on express admission for the Plaintiff against the Defendant of Kshs. 53,421,778.10.



17. It is now a settled principle of law that judgement will be entered on admission only where the admission is clear and unambiguous. Noteworthy is that admissions can be expressed or implied either on the pleadings or otherwise e.g. in correspondence.
18. Madan, JA (as he then was) expressed himself as follows in this famous passage in *Choitram v. Nazari* [1984] eKLR:

“ 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...”
19. Paragraph 4 of the Defendant’s Statement of Defence stated;

“ The goods supplied and other costs payable to the Plaintiff amounted to Kshs.53, 421,778 and not Kshs.63, 289,564.58.”
20. Further, the Defendant itself produced a letter dated 11th January 2021 and in part the letter read;

“ The total outstanding amount to date is Kshs.53, 421, 778.10 and not Kshs.63, 289,564.58 as alleged in your letter. Your client issued us with a credit note of Kshs.13, 348,344.53. A fact that is well known to your client.”
21. The above mentioned letter when looked at in the light of pleading at paragraph 4 of the Statement of defense leaves no doubt that no just purpose would be served by delaying the plaintiff from getting judgment on the face of that very plain and unequivocal admission.
22. It is my considered view that entering judgement on admission at this stage and for the specific sum admitted is the only fair and just thing to do.
23. The Plaintiff/Applicant filed Plaintiff’s List of Documents and annexed Invoices for goods supplied in 2018 Pg1-26 the last invoice of 23rd May 2018. Whereas the court takes judicial notice under Section 60 of *Evidence Act* that a worldwide Corvid 19 pandemic occurred in March 2020 upto towards end 2020 when there were lockdowns and curfews that adversely impacted on social and economic lives hence payments were difficult to make, this court notes with concern, that the outstanding debt was incurred way before the pandemic and secondly , even after the Agreement of 20th February 2020, the Defendant made no attempts to repay any amount of the admitted debt for supply of goods by the Plaintiff.
24. Demand letters annexed of 11th January 2021, 15th January 2021, 19th January 2021, 10th February 2021,16th February 2021, and reconciliation of Accounts of 11th January 2021, all attest and confirm outstanding debt and there is no evidence of any repayment by the Defendant since 2018.

DISPOSITION

1. In light of the above, judgment is entered on admission for the Plaintiff in the sum of Kshs. 53, 421,778.10 together with interests thereon at court rates from the 11th January 2021, when the admission was made, till payment in full.

DELIVERED SIGNED & DATED IN OPEN COURT ON 17TH DECEMBER 2021(VIRTUALLY)

M.W. MUIGAI

JUDGE

