REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO. 44 OF 2019

TOP IN TOWN DRY CLEANER SERVICES LIMITED..PLAINTIFF/APPLICANT

VERSUS

AEGIS KENYA LTD. T/A LEOPARD

BEACH RESORT & SPA HOTEL.....DEFENDANT/RESPONDENT

R U L I N G

1. Before Court for determination is an application for entry of judgement on admission filed by the Plaintiff/Applicant. The brief and unopposed background to the present suit is that the parties *were* in a contractual relationship for provision of dry cleaning services. The pleadings indicate that under the agreement, which commenced on or around November 2014, the plaintiff/applicant would provide dry cleaning services to the defendant and the defendant would remit monthly payments for the said services when the same fell due. It is evident that the contract was operational until January 2019 when the plaintiff/applicant halted provision of its dry cleaning services citing unpaid invoices amounting to **Kshs. 26,836,596.68/=**. Thereafter, the parties were unable to agree on the true amount owed by the defendant/respondent and a suitable repayment plan. As a result, the present suit was instituted vide the plaint filed on 11th June 2019. The defendant filed its defence on 24th July 2019. In that defense, the provision of the services was admitted but the existence of service contract order was denied together with any invoice in the sum of kshs. 40,754,847.80/=. It was further admitted that there had been an admission for the debt in the sum of ksh. 23,836,596.68 but it was contended that the sum was subject to a reconciliation which process had been intended But no plaint was served before conclusion. There was then a pleading on a *without prejudice* basis that there was a debt owed but the sum was to be agreed upon by a negotiation because the defendant had suffered a fire incident in which it lost more than 60% of its business.

2. On 27th August 2019, the plaintiff filed an application for entry of judgement on admission for the sum of Kshs. 23, 836,586.68/=. It is the plaintiff/applicant's contention that the defendant/respondent admitted to owing the Kshs. 23,836,596.68 in two instances. Firstly vide the letter dated 5th January 2019 and secondly via paragraph 10 of the statement of defence. Of course the defendant/respondent opposes this application.

3. For the purposes of this ruling it is paramount to reproduce the relevant parts of the aforementioned documents. The letter dated 5th January 2019 was addressed to the director of the plaintiff by the financial controller of the defendant and reads in part:

> **"We refer to your letter dated 28th December 2019 in regards to overdue debt of KES 26,261,596.68 as per your reconciliation on the same date.**
>
> **As per our attached reconciliation we have noted that you have not included paid cheques worth KES 2,425,000.00 of which will bring the balance of the overdue debt to KES 23,836,596.68.**
>
> **Kindly note that in as per your letter thereof we cannot be able to pay the full amount of KES 23,836,596.68 in 14 days due to our unstable nature of cash flows and we are requesting to be settling KES 800,000.00 on monthly basis without fail.**
>
> **Thanks in advance for your understanding and cooperation towards settling the above debt amicably."** (Emphasis provided)

4. On the other hand, paragraph 10 of the statement of defence reads:-

> **"In response to paragraph 11, 12 and 13 of the plaint and WITHOUT PREJUDICE TO THE FOREGOING, while the defendant admits being indebted to the plaintiff, which amount was to be agreed upon reconciliation of its accounts, the defendant has never been against an out of court settlement but only sought for the plaintiff's indulgence after it suffered a vicious fire incident that razed a huge section of its premises on 10.02.2019 in which they lost more than 60% of their accommodation portfolio thus rendering them barely operational and severely affected its cash flow."**

5. The foregoing two excerpts forms the crux of the analysis herein and lead the court to frame the sole issue for determination to be *whether the wording of the letter dated 5th January 2019 and paragraph 10 of the defence amount to an admission of debt of Kshs. 23, 836,586.68/= by the defendant?*

6. Order 13 rule 2 of the Civil procedure rules 2010 provides for judgement on admission 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 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".**

7. The court has taken note that the plaintiff in suing after the letter alleged to contain the admission had been received opted to only claim the admitted sum.

8. 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. ***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…"**

9. The position was further reiterated by the Court in ***Vehicle and Equipment Leasing Limited v Coca Cola Juices Kenya Limited [2017] eKLR*** quoted with approval the case of ***Ideal Ceramics Ltd –v- Suraya Property Group Ltd HCCC No. 408 of 2016*** (unreported), where the court held as follows:

> **"[16] The law on summary procedure vide a judgment on admission is now relatively clear. The purpose of the law laid out under Order 13 of the Civil Procedure Rules is to ensure that a party whose entitlement is evidently due and admitted does not wait for determination by the court of a non-existence question. It is undesirable to litigate when there is no question or issue of fact or law. The summary process in this regard assists in ensuring that unnecessary costs and delays are not invited.**
>
> **[17]The court's power to enter judgment on admission is discretionary: see Cassam vs. Sachania (supra). The discretion is to be exercised only in cases where the admission, whether express or implied, is plain, clear, unconditional, obvious and unambiguous: see Choitram vs. Nazari (supra) and Momanyi vs. Hatimy & Another [2003]2 EA 600. The admission ought to be obvious on the face thereof and leave no room for doubt.**
>
> **[18]An admission may be formal (typically an admission made in the pleadings) or informal (typically admissions made pre-action being filed in court but after demand has been made).**

10. With the foregoing principles for consideration in applications for judgment on admissions in mind, I have posed for myself the question if the letter dated 5th January 2019 and paragraph 10 of the defence amount to a clear and unambiguous admission of debt of **Kshs. 23, 836,586.68/=** by the defendant? According to the letter dated 5th January 2019, it is as clear as day light that the plaintiff/applicant having demanded the sum of **KES 26,261,596.68,** the financial controller of the defendant/respondent admitted that the lower sum of **KShs 23,836,596.68** was owed. That to this court was a conscientious, voluntary and forthright admission of part of the plaintiffs claim which leaves no doubt in the mind of any reasonable person that the sum was owed but the defendant sought indulgence not to pay at once but by installments.

11. It is my considered opinion that entering judgement on admission at this stage and for the specific sum admitted is the only fair and just thing to do.

12. The letter of 05/01/2019 when looked at in the light of pleading at paragraph 10 of the statement of defence have no doubt that no just purpose would be served by delaying the plaintiff from getting judgment on the face of that very explicit admission.

13. After keen consideration of the parties pleadings, the Court adopts the view and finding that the amount owed is uncontested and incontestable to merit inviting trial by oral evidence. The result of the foregoing analysis is that I do enter judgment on admission for the plaintiff in the sum of KES 23,836,596.68 together with interests thereon at court rates from the 5/01/2019, when the admission was made, till payment in full. I also award to the plaintiff the costs of the suit.

Dated, Signed and Delivered at Mombasa this 24th day of January, 2020.

P.J.O. OTIENO

JUDGE