



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI LAW COURTS**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**CIVIL SUIT NO. 11 OF 2018**

**PAUL TINDI ODERA.....PLAINTIFF/APPLICANT**

**VERSUS**

**EXP MOMENTUM LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

1. The Plaintiff by a plaint dated 10<sup>th</sup> January 2018, the plaintiff seeks for Judgment against the defendant as follows:-

- (a) A declaration that the plaintiff is entitled to compensation for developing the work (Universities 7s Rugby Tournament Manuals) for the defendant;*
- (b) That the Honourable court assess and award damages for breach of contract and infringement of the plaintiff's copyright;*
- (c) That the Honourable court assess and award monetary compensation to the plaintiff for the use of the work;*
- (d) An order of injunction to restrain the defendant EXP Momentum Limited either by itself, its agents, employees, servants, accomplices or anyone claiming through the defendant from holding any Rugby tournament under the title Kings of Rugby or any other name pending the hearing and determination of this suit;*
- (e) Costs of the suit;*
- (f) Any other relief the Honourable court may deem just and fit to grant.*

2. Upon service of the plaint, the defendant filed a statement of defence dated 7<sup>th</sup> March 2018. Subsequently the plaintiff (herein "the applicant") filed a notice of motion application dated 13<sup>th</sup> July 2018, brought under the provisions of; Order 13 Rule 2, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

3. The applicant is seeking for orders as follows;-

- (a) That the Honourable court be pleased to grant the applicant judgment on admission to be entered against the defendant on account of its admission;*
- (b) That the applicant be granted leave to rely on the documents produced as the plaintiff's list of documents dated 10<sup>th</sup> January 2018 from page 11 to page 107 in the bundle filed with the plaint;*
- (c) That costs of the application be awarded to the plaintiff/applicant.*

4. The application is premised on the grounds of the face of it and an affidavit of even date, sworn by Paul Tindi Odera, the Applicant. He avers that in the year 2013, he was approached by the defendant's strategy director to help the defendant develop a Rugby Tournament manuals targeting campus youth with the hope that the defendant could help youth students with a platform to grow their talent, using the defendant's footprint across borders.

5. That between the years 2013 and 2014, he created manuals for the organizing and running of a University Rugby Tournament for the defendant. The defendant dubbed the Universities Rugby Tournament ‘The Kings of Rugby’ and proceeded to trademark the name ‘the Kings of Rugby’ as its property.
6. Since the year 2014 to date, the defendant has organized and run the Kings of Rugby Tournament in Nairobi in the years 2014 and 2015, Nakuru in the year 2016 and Kisumu in the year 2017. Further, the applicant introduced the defendant to the Kenya Universities Sports Association (KUSA), the Kenya Rugby Union (KRU) and various other necessary parties to ensure a successful Tournament in the year 2014.
7. In November 2015, he requested to meet the defendant through its strategy manager Ms. Angeline Sonje, to discuss the issue of his payment for creating the work. He was informed that the defendant was yet to reach a conclusion on the matter and would get back to him. He sent a reminder to the defendant’s Managing Director Mr. Simon Manambo on 7<sup>th</sup> January 2016, and received a response that they would set up a meeting but unfortunately the meeting never materialized. Further reminders were sent on 3<sup>rd</sup> February 2016 and 27<sup>th</sup> July 2016 but have not received any response to date and neither has he been compensated.
8. The applicant avers that the continuous use of his works without payment is violating his constitutional right to protection of his intellectual property rights enshrined in Article 40(5) of the Constitution of Kenya 2010 and by extension his right to sanctity of property.
9. That he has tried to settle this matter amicably through various channels including but not limited to the Kenya Copyright Board and the Sports Tribunal but the defendants have neglected and refused to engage in any mediation sessions or talk. Hence, a prayer to the court to compel the defendant to adequately pay him for the work he created.
10. The applicant further avers that the defendant has admitted in their replying affidavit that they engaged him to prepare manuals and proposals and have not shown any proof of payment for that work. That the court has the power to grant him the judgment based on the defendant’s admission and it is only just and fair that judgment be entered against the defendant on admission.
11. However the defendant (herein “the respondent”) opposed the application through a replying affidavit dated 29<sup>th</sup> August 2018, sworn by its Strategy and Creative Director Edwin Awiti. He deposed that the application is ill conceived, mischievous, and a blatant abuse of the court process. The defence raises triable issues to which the plaintiff filed a reply on 20<sup>th</sup> March 2018
12. The Respondent averred that it has not admitted to any of the plaintiff’s claim but has only averred in the defence that it engaged the applicant under a contract and has fully paid the contractual sum. That whereas the court has the discretionary power to render judgment on admission, the discretion has to be exercised judiciously and only in cases where the admission is plain, clear, unconditional, obvious and unambiguous.
13. The respondent argued that, the subject manuals are not in the documents produced by the applicant dated 10<sup>th</sup> January 2018 from page 11 to page 107 in the bundle filed with the plaintiff. Further, the grounds relied upon by the applicant as stated in the application are clearly speculative and generalities which are unsupported by evidence and particulars.
14. The application was disposed of by the parties filing submissions which I have considered herein. The main issue for determination is whether the respondent has admitted to the applicant’s claim. The plaintiff submits that, the respondent has admitted; instructing the applicant to develop the manuals and the proposal, using the same and not paying the applicant for his services.
15. The respondent further submitted that the applicant’s analysis of paragraphs 3 and 8 of the defence to the effect that it amounts to an admission is erroneous, misconceived and misconstrued. The two paragraphs are just a necessary background of facts that led to the first interaction between the parties. Further, the word used under paragraph 3 of the defence is “contacted” and not “contracted”.
16. It is further submitted that, the plaintiff undertook the subject works as part of his duties as a tournament director in the years 2014 and 2015 which were fully compensated for by the defendant. Finally, the defence at paragraph 22 raises a point of law relying on Section 31(1) of the Copyrights Act 2001.
17. I have considered the arguments advanced and the annexures to the affidavits filed by the parties. The provisions that govern judgment by admission are stipulated under Order 13 Rule 2 of the Civil Procedure Rules which states as follows:-

*“2. 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.”*
18. Further, it is settled that, the grant of judgment on admission is a discretionary power of the court, which has to be exercised judiciously and in the interest of justice. (See; *Civil Case No. 377 of 2016; Vehicle and Equipment Leasing Ltd vs Coca Cola Juices Kenya Limited formerly t/a Beverage Services (K) Ltd (2016)*). Further, it is settled law that for the court to grant the judgment on admission, the admission has to be implied either on the pleadings or otherwise. (See; *Civil Case No. 192 of 2015 Peeraj General Trading & Contracting Company Limited (Kenya) vs Mumias Sugat Company Limited (2016) eKLR*).
19. This admission has to be plain, clear, unconditional, obvious and unambiguous. (See paragraph 7 of the Respondent’s submissions). In the instant matter, I find that the applicant avers in prayers (1) of the application that “judgment on admission be entered against the defendant on account of its admission.” The applicant does not specify to the court where the admission is found, whether in the pleadings, correspondences or elsewhere. In the absence thereof, the court is not even able to analyze the admission for viability. In the same vein, if

the admission is in the pleadings, and more so in the defence, then the court should have been guided on the specific paragraphs. Neither is it stated in the grounds in support of the application or supporting affidavit. The applicant only purports to do so in the submissions at paragraph 10(a-h).

20. Even if the court were to consider the application on merit, I find that the defendant does not admit any of the plaintiff's claim anywhere in the defence. At paragraph 3, it is indicated that it "contacted" the plaintiff. Subsequently, it engaged the expertise services of the plaintiff as a Tournament director as stated at paragraph 9. That the appointment was on contractual basis for the year 2014/2015 at an agreed remuneration of Kshs. 400,000 for every successful tournament and the same was paid.

21. As a result, it is clear that, there are issues in dispute as to:-

- (a) *Whether the plaintiff was engaged as a Tournament Director or on a contract basis;*
- (b) *What were the terms of engagement agreed on by the parties and/or;*
- (c) *What was the scope of works the plaintiff was to undertake;*
- (d) *What was the mode of payment agreed on, and/or sales (if any);*
- (e) *Was the plaintiff paid for works done?*

22. Therefore, this is not a plain and clear case. I decline to grant prayer (1). The prayer (2) does not seem to have been prosecuted and I am not sure why it was included in the application. The application is thus dismissed. Costs to abide the outcome of the suit.

23. It is so ordered.

**Dated, delivered and signed in an open court this 26<sup>th</sup> day of February 2020.**

**G.L. NZIOKA**

**JUDGE**

**In the presence of:**

**Mr. Sabula for Gichuhi for the plaintiff/applicant**

**Mr. Mutua for Mr. Sisule for the defendant/respondent**

**Robert-----Court**

**Assistant**