



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL SUIT NO. 83 OF 2017**

**EDEN TRANSPORT AND LOGISTICS LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**EAST AFRICAN CARGO LOGISTICS LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

**The Facts and background to the dispute**

1. This ruling is a determination of the plaintiff's notice of motion application dated 25<sup>th</sup> May 2018. The application is brought pursuant to Order 13, Rule 2 and Order 51, Rules 1 & 3 of the Civil Procedure Rules and seeks entry of judgement on admission in favour of the plaintiff.
2. The court record shows that the plaintiff instituted this suit on 22<sup>nd</sup> August 2017 claiming the sum of USD 312,285 on account of the sum due and owing by the defendant to the plaintiff on transport of cargo from the port of Mombasa .
3. The plaintiff's case is that the defendant owes it a total of USD 312,285.00 in respect of transportation services rendered on diverse dates during the years 2016 and 2017. The defendant denies owing the plaintiff the sum of USD 312,285.00 or any part thereof. On 8<sup>th</sup> June 2018, the plaintiff filed the instant application for entry of judgement on admission. The plaintiff argues that before the suit by a letter dated 18<sup>th</sup> August 2017 and after the suit by its witness statement, the defendant admitted to owing the plaintiff the sum of USD 312,285.00. The defendant filed its replying affidavit in opposition and a list of authorities on 3<sup>rd</sup> October 2018.

**The Parties' submissions**

4. On 30<sup>th</sup> April 2019, the advocates for the respective parties appeared in court and made their oral submissions on the instant application. Mr. Adhoch for the plaintiff urged that the relevant admission is evident in two documents: the letter dated 18<sup>th</sup> August 2017 and paragraph 13 of the witness statement of the defendant's managing director. He referred to the defendant's statement of defence as a "sham that is evasive and cannot be sustained." He requested the Court to allow the application as prayed and enter judgement on admission.
5. Mr Kong'ere in opposing the application began by quoting *Agricultural Finance Corporation versus Kenya National Assurance Company Limited (In receivership) [1997] eKLR* to the effect that an admission must be clear and unambiguous. He submitted that the defendant denies having authored the letter and does not know its origins. He continued that this is an application for judgement on admission and not an application to strike out the defence, hence the plaintiff cannot term the defence as evasive. In his view, the plaintiff is merely attempting to avoid proving its case at trial by use of a shortcut. Mr Kong'ere submitted that judgement on admission is not a right but a discretion to be used sparingly. He requested the court to dismiss the instant application and direct that the suit proceed to full hearing on the merits.
6. This being an application for entry of judgement on admission, the issue for determination remains whether there is demonstrated a clear and an equivocal admission of the claim
7. The plaintiff's application finds its foundation in the letter by the defendant dated 18<sup>th</sup> August 2017 and the witness statement said to have admitted owing the plaintiff the sum of USD 312,285.00. For the purposes of finding out the answer to the question posed it is necessary that I reproduce the relevant portions of the aforementioned documents. The letter dated 18<sup>th</sup> August 2017 was addressed to the then plaintiff's advocates on record and reads in part:

**I am in receipt of your letter dated 3<sup>rd</sup> August 2017 which was delivered to our office on 14<sup>th</sup> August 2017. I hereby confirm that we owe Eden transporters USD 312,185 for transportation services.**

We have issued Eden transporters post-dated cheques to cover the amount up to December 2017 with effect from May 2017 but we have only so far managed to cover one cheque of USD 20,000 since most of our clients stopped shipments due to the elections...

On the other hand, paragraph 13 of the defendant's witness statement reads:

**It is indeed true, as the plaintiff says, that I issued post-dated cheques totalling to USD 312,285.00. The cheques were however not being issued for encashment. We had an agreement with the plaintiff that the cheques were simply security for the payment of USD 300,900.00 which was already certainly due. Therefore, once I paid the USD 300,900.00 in full, the plaintiff was not supposed to cash the cheques on their due dates.**

8. The law governing the consideration to be made on an application for judgment on admission is found in **Order 13 Rule 2 of the , 2010** which provides 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.”**

9. In the case of *Ideal Ceramics Ltd –v- Suraya Property Group Ltd HCCC No. 408 of 2016 (unreported)* as quoted in *Vehicle and Equipment Leasing Limited v Coca Cola Juices Kenya Limited [2017] eKLR* the court stated 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. 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...”**

11. These are the principles of law applicable when considering a summary procedure application such as the present one. I will seek reliance of the said principles in establishing if the defendant by its letter dated 18<sup>th</sup> August 2017 and paragraph 13 of its witness statement dated 16<sup>th</sup> May 2018 amount to an admission of owing the plaintiff the sum of USD 312,285.00?

12. The foregoing excerpts I have set out above form the crux of the analysis herein. At the onset, I make the following observations. Firstly, the letter dated 18<sup>th</sup> August 2017 was in answer to a demand and bears the defendant's letterhead. Secondly, I also note that the defendant admitted to issuing post- dated cheques equivalent to the amount that the plaintiff is presently claiming. Thirdly, I find it peculiar that the defendant via its pleadings and submissions of its counsel alleges payment of USD 300,900 yet it has not provided evidence of the same.

13. Determination of the existence of an admission is largely a matter of fact. Having considered the pleadings and submissions of the parties and the applicable law, it is my considered view that the wording and purport of the letter dated 18<sup>th</sup> August 2017 amounts to a conscientious, unambiguous, voluntary and forthright admission of the plaintiff's claim. There is no doubt in my mind that the sum was admitted as owing but the defendant sought indulgence not to pay at once but by instalments.

14. It is my considered opinion that on such clear and incontestable acknowledgment of a debt, entering judgement on admission at this stage and for the specific sum admitted is the only fair and just thing to do. The letter of 18<sup>th</sup> August 2017 when looked at in light of paragraph 13 of the defendant's witness statement leaves no doubt that no just purpose would be served by delaying the plaintiff from getting judgment on the face of that very explicit admission.

15. After an anxious 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 **USD 312,285.00** together with interests thereon at court rates from the 18<sup>th</sup> August 2017, 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 29th day of May, 2020.**

**P.J.O. OTIENO**

**JUDGE**