



**REPUBLIC OF KENYA**

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

**COMMERCIAL & TAX DIVISION**

**HCCC NO. E 119 OF 2019**

**STANBIC BANK KENYA LIMITED ..... PLAINTIFF/APPLICANT**

**VERSUS**

**WORTHMORE SOLUTIONS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**OSCAR KIPYEGON KOECH ..... 2<sup>ND</sup> DEFENDANT**

**WILLIAM WANJOHI WANJIKU ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff's action against the three Defendants is a joint and several Judgment for Kshs.20,674,627.70/= together with interest thereon at the Plaintiffs commercial rates from 4<sup>th</sup> February 2019 until payment in full on account of Hire Purchase facilities granted by the Plaintiff to the 1<sup>st</sup> Defendant.

2. In a Notice of Motion of 27<sup>th</sup> May 2017, the Plaintiff has sought that Judgment on admission be entered against the Defendant as prayed in the Plaintiff. It is anchored upon the provisions of Order 13 Rule 2.

3. Evidence in support of the application is presented through the affidavit of Elisha Nyikuli sworn on 27<sup>th</sup> January 2020.

4. In a letter of 17<sup>th</sup> June 2015 the 1<sup>st</sup> Defendant writes, partly;

“This is a response to your letter reference above concerning the outstanding loan balances of Kshs.21,684,687.80 whose repayment has been outstanding over the 90 period day”.

After making this admission, the 1<sup>st</sup> Defendant makes a proposal for settlement.

5. Another proposal for payment is in the letter of the 1<sup>st</sup> Defendant of 1<sup>st</sup> October 2018 to the Wamae & Allen Advocates who were advocates for the Bank.

6. That is not all to the matter. A further admission is found in an email authored by the 2<sup>nd</sup> Defendant on 14<sup>th</sup> March 2017. There is yet another admission in an email of 21<sup>st</sup> March 2019.

7. It is common ground, and not denied by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant, that the two provided personal guarantees and indemnity for the 1<sup>st</sup> Defendants debt to the Bank. One guarantee is dated 8<sup>th</sup> March 2016 while the other is undated. The taking of the two guarantees is expressly admitted by the Defendants in their Statement of Defence of 6<sup>th</sup> June 2019 (See paragraphs 6 and 7 of the statement of Defence).

8. What do the Defendants say in the face of all these admissions? The 2<sup>nd</sup> Defendant swore a replying affidavit sworn on 24<sup>th</sup> February 2020 on his own behalf and on behalf of the other two Defendants. He says that after the filing of the suit, the Defendants made the following payments:-

a) Kshs. 4.1 Million on 28<sup>th</sup> June 2019

b) Kshs. 874,724.23 on 20<sup>th</sup> January 2020

9. While the Defendants do not dispute the debt, the 2<sup>nd</sup> Defendant deposes:-

“That the amounts sought by the Plaintiff has therefore substantially reduced and the Plaintiff therefore cannot purport that the debt is Kshs. 20,674,627.70/=”

10. Prior and after the filing of this suit, the three Defendants unequivocally admitted owing the Bank money. The amount admitted prior to the filing of suit was Kshs.21,684,687.80. The amount of Kshs.20,674,627.70 sought in the Plaintiff has not been disputed save that some payments have since been made. These payments are not contested by the Plaintiff. This is a case of admission which is as clear as can be.

11. The result is that I allow the application of 27<sup>th</sup> January 2020 with costs but credit shall be given to the Defendants for payment of Kshs.4,100,000/= made on 28<sup>th</sup> June 2019 and Kshs.874,724.23 made on 20<sup>th</sup> January 2020. Interest shall be on the contracted rate until payment in full. The Plaintiff shall also pay costs of the suit.

**Dated, Signed and Delivered in Court at Nairobi this 15<sup>th</sup> Day of June 2020**

**F. TUIYOTT**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17<sup>th</sup> April 2020, this Ruling has been delivered to the parties through virtual platform.

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Waigwa for the Plaintiff.

Abong for the Defendant.