



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

HIGH COURT CIVIL CASE NUMBER 334 OF 2017

**ISUZU EAST AFRICA LIMITED (Formerly General Motors
East Africa Limited).....PLAINTIFF**

-VERSUS-

NAIROBI CITY COUNTY GOVERNMENT.....DEFENDANT

RULING

BACKGROUND

The Plaintiff (herein “**General Motors East Africa Limited**”) instituted a suit against the Defendant (herein “**Nairobi City County Government**”) alleging that on or about the year 2016, through several local purchase orders and Contract Agreements, the Defendant approached the Plaintiff to purchase a number of motor vehicles.

The Plaintiff avers that in fulfilment of the local purchase orders and Contract Agreements, on diverse dates in the year 2016 the Plaintiff dispatched and delivered the contracted Motor vehicles to the satisfaction of the Defendant.

The Plaintiff further avers that the Defendant accepted delivery of the said motor vehicles and in turn the Plaintiff issued the Defendant with invoices for **Ksh 98,532,000.02** being the purchase price of the delivered motor vehicles.

PARTICULARS OF THE INVOICES

Invoice Number	Invoice date	Due date	L.P.O Number	Model	Chasis	Reg. Number	Invoice Amount
91217824	29/06/16	30/07/16	Contract	Cruze	GK308837		3,100,000.00
91218308	30/06/16	30/07/16	002236	TFS D/CAB	C4740399	47CG318A	4,200,000.00
91222656	28/07/16	30/08/16	002358	TFS D/CAB	F4748126	47CG326A	4,200,000.00
91222657	30/07/16	30/08/16	002358	TFS D/CAB	F4750867	47CG326A	4,200,000.00
91225217	18/08/16	30/09/16	002388	TRAILBLAZER	GH651795		5,200,000.01
91229103	15/09/16	30/10/16	002365	FVZ	F7000033	47CG325A	10,600,000.00
91235491	24/10/16	30/11/16	002144	PLAT FORM	F7101995	47CG353A	12,272,000.00
91235492	24/10/16	30/11/16	002363	PLAT FORM	F7101996	47CG352A	12,272,000.00

91235490	26/10/16	30/11/16	002365	FVZ	F7000333	47CG355A	10,600,000.00
91237840	11/11/16	30/12/16	002362	FVZ	F7000332	47CG356A	20,688,000.00
91243252	30/12/16	29/01/17	002373	BUS	F7000057	47CG357A	11,200,000.01
							98,532,000.02

The Plaintiff avers that the final payment for the above orders was to be made by the Defendant by 29th January 2017. To date the Defendant has not paid a single cent in fulfillment of its obligation under the agreement thus owes the Plaintiff a total of Ksh 98,532,000.02.

DEFENDANT'S STATEMENT OF DEFENCE

The Defendant in its defence denied entering into any agreement with the Plaintiff and/or giving the Plaintiff local purchase orders as pleaded in paragraph 3 of the Plaintiff and puts the Plaintiff to strict proof thereof.

The Defendant denied ever receiving the number of motor vehicles as stated in paragraph 4 and 5 of the Plaintiff or any other in fulfillment of a contract agreement as alleged.

The Defendant denied ever receiving any invoices from the Plaintiff related to delivery of motor vehicles or any other documents and denies that the final payment for the motor vehicles was to be on 29th January 2017.

The Defendant denied the particulars of breach of contract and loss and the Defendant stated that a contract not signed or dated cannot form the basis of litigation as well as local purchase orders without an official resolution to procure such products.

The Defendant denied the Plaintiff has a cause of action, the suit is incompetent, misdirected and misconceived. At a later date the Defendant intends to raise a Preliminary Objection and also seek leave of the Court to strike out the Plaintiff.

The Plaintiff filed Reply to Defense on 5th December 2017, and averred the cause of action against the Defendant was/is competent and maintainable and would demonstrate the same at the hearing of the suit.

The Plaintiff pleaded that the Defendant's Defense is a bare denial, a sham and raises no triable issues, lodged purely to delay and frustrate the Plaintiff's quest for expeditious determination of the Claim for relief.

NOTICE OF MOTION DATED 1ST OCTOBER 2019

By Notice of Motion Application dated 1st October 2019, brought under the provisions of **Order 13 Rule 2 of the Civil Procedure Rules, Sections 1A, 1B, 3A of the Civil Procedure Act, Order 51 Rule 1, 3 and 4 and all other enabling provisions of the law**, the Applicant sought orders;

1. That Judgment on admission be entered against the Defendant in favor of the Plaintiff as prayed in the Plaintiff in respect of;
 - a. Kenya Shillings Sixty-Nine Million Two Hundred and Ninety-Six Thousand One Hundred and Thirty-Eight (Ksh69,296,138.00) being the outstanding balance of the debt admitted by the Defendant in the sum of Kenya Shillings Ninety-eight Million, Five Hundred and Thirty-two Thousand and two cents (Ksh 98,532,000.02)
 - b. Interests on (a) above at the prevailing bank rates from the due date until payment in full
 - c. General damages
 - d. Costs of the suit together with interest thereon
2. That the costs of this application be provided for.

The Application was based on grounds;

- a. In 2016, the Defendant approached the Plaintiff through form of Contract Agreement and several LPOs to purchase motor vehicles.
- b. The Plaintiff during the same year dispatched and delivered motor vehicles to the Defendant worth Ksh 98,532,000.02/-as per details of outlined in the Plaintiff. The Supporting Affidavit by Mr Anthony Musyoki copies of Local Purchase Orders (**LPOs**) are marked

AM-1, Copies of Delivery Notes are Marked **AM-2** and copies of Invoices marked **AM-3(a)** & corresponding Schedule of Accounts marked **AM- 3 (b)**.

c. On 5th May 2017, the Plaintiff through advocates on record issued a demand letter marked **AM- 4**. On 22nd June 2017, through the Defendant's then County Executive Committee Member for Finance & Economic Planning Mr. Gregory S. Mwakanongo responded to the Plaintiff's demand and admitted indebtedness. He proposed payment in instalments from end of June 2017. This is contained in the letter annexed to Supporting Affidavit and marked **AM-5**.

d. On 6th November, 2018, the Defendant's Committee on Finalization of Pending Bills & Audit of Procurement Process chaired by Prof PLO Lumumba wrote to the Plaintiff and confirmed the debt due and owing vide letter annexed and marked **AM-7**.

e. The Plaintiff attached the reconciled accounts marked **AM-6** which confirmed the Defendant made part payment of Ksh 9,617,931/- in 2017. On 15th May 2018 the Defendant remitted Ksh 19,617,931/-. The outstanding amount is now Ksh 69,296,138/-

f. The Defendant has caused the Plaintiff great loss over years of unsettled funds from a legitimate commercial venture.

DETERMINATION

The issue for determination is whether Judgment on admission shall be entered against the Defendant for the outstanding debt in favour of the Plaintiff for **Ksh 69,296,138/-**

PLAINTIFF/APPLICANT'S SUBMISSIONS

The Plaintiff/Applicant relied on **Order 13 Rule 2 of CPR 2010** on judgment on admission and the landmark case *Choitram vs Nazari 1984 eKLR*. **Order 13 Rule 2 CPR 2010** on admissions which provides;

“Judgment on admissions

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.”

Choitram vs Nazari [1984]KLR 237 that spelt the guiding principles of judgment on admission, Madan J stated;

“For the purpose of order XII rule 6, admissions can be express or implied either on the pleadings or otherwise, eg in correspondence. 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 that the parties passed out of the stage of negotiations onto a definite contract. It matters not if the situation is arguable, even if there is a substantial argument, it is an ingredient of jurisprudence, provided that a plain and obvious case is established upon admissions by analysis. Indeed, there is no other way, and analysis is unavoidable to determine whether admission of fact has been made either on the pleadings or otherwise to give such judgment as upon such admissions any party may be entitled to without waiting for the determination of any other question between the parties. In considering the matter, the judge must neither become disinclined nor lose himself to the jungle of words even when faced with a Plaint such as the one in this case. To analyze pleadings, to read correspondence and to apply the relevant law is a normal function performed by judges which has become established routine in our Courts.....”

In *Cassam vs Sachania [1982] eKLR 191*, the Court noted;

“Granting judgment on admission of facts is a discretionary power which must be exercised sparingly in only plain cases where admission is clear and unequivocal....Judgment 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.....the Judge's discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to judgment.”

In *Vehicle & Equipment Leasing Ltd vs Coca Cola Juices Ky Ltd formerly T/A Beverage Services (K) Ltd* following the case of *Ideal Ceramics vs Suraya Property Group Ltd HCCC 408 of 2016* L Onguto held;

“The law on summary judgment vide judgment on admission is now relatively clear. The purpose of the law laid out under Order 13 of CPR is to ensure that a party whose entitlement is evidently due and admitted does not wait for determination by a Court of a non-existent 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.”

DEFENDANT/RESPONDENT'S SUBMISSIONS

The Defendant relied on the following case-law to buttress its position;

In AAT Holdings Ltd vs Diamond Shield International [2014] eKLR Gikonyo J observed;

“There are sound legal and policy considerations which are responsible for the approach taken by law on this subject; arising from the right to access to justice by all parties. On the one hand, there is the Defendant who will be driven from the seat of justice without trial if summary judgment is entered, and on the other hand, you have the Plaintiff who is entitled to expeditious disposal of the case without delay especially where the Defendant has no defense worth a trial. Which then places the Court in a situation where it has to engage in a novel and delicate balancing act of ensuring that; 1) the Defendant gets a fair trial by considering whether there is a triable issue exists; and 2) the Plaintiff equally gets a fair trial by elimination such delay in the administration of justice which would keep him away from his just dues or enjoyment of property.....”

The renowned case of DT Dobie & Co (Ky) Ltd vs Muchina [1982]eKLR on principles of striking out pleadings;

“The summary jurisdiction of the Court was never intended to be exercised by minute and a protracted examination of documents and the facts of the case in order to see whether the Plaintiff really has a cause of action. To do so is to usurp the position of the Trial Judge and to produce a trial of the case in Chambers, on affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the Court and not a proper exercise of power.”

In Crescent Construction Co Ltd vs Delphis Bank Ltd C.A. 146 of 2001 eKLR; the Court of Appeal in considering a Plaintiff that was struck out on grounds that it failed to disclose a cause of action stated;

“However, one thing remains clear, and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with greatest care and caution. This comes from realization that the rules of natural justice require that a Court must not drive away any litigant however weak his case may be from the seat of justice. This is a time honored legal principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.

See Also; Job Kilach vs Nation Media Group Ltd Salaba Agencies Ltd & Michael Rono C.A. 94 of 2006 [2015] eKLR on summary judgment.

HCCC 164 of 2015 Gyam Investments Co Ltd vs AG on when judgment on admission is/not entered.

C.A. 62 of 2007 Dennis Costello Doyle vs Diamond Trust Bank Ky Ltd held that an admission in one fact does not mean clear and unequivocal admission of fact to entitle a party to judgment on admission. A reading of the authority confirms the appeal was allowed on the basis of wrongful execution.

ANALYSIS

Applying the principles of law espoused by the various cited cases to the facts of the instant suit/ application; the Court is mandated to analyze the pleadings, the correspondence and other documents and apply the relevant law to determine whether or not admission(s) are disclosed entitling the Plaintiff to entry of judgment as pleaded in the application.

The Plaintiff's claim is that, in 2016 the Defendant entered into a contract and issued the Plaintiff with 11 LPOs (annexed to the bundle of documents of the Plaintiff) to sell to the Defendant and deliver the described motor vehicles as specified in the Tender documents as specified in paragraph of the contract (annexed to the Plaintiff)

The Defendant delivered the specified motor vehicles to the Defendant as evidenced by the Delivery Notes (annexed to bundle of documents to the Plaintiff.)

The Plaintiff issued Invoices of the sold and delivered motor vehicles

(annexed to bundle of documents to the Plaintiff) and Statement of Account

Dated 23rd February 2017(also annexed to the bundle of documents to the Plaintiff)

The Defendant denied in toto paragraphs 3,4,5,6, 7 & 8 of the Plaintiff that it released to the Plaintiff LPOs and/or contracted with the Defendant. The Defendant denied delivery of any or all motor vehicles ordered. The Defendant denied issuance of Delivery Notes and Invoices and that any monies were/are due and owing.

The Defendant contested the contract not signed and dated and that it cannot form the basis of litigation.

The Defendant in paragraphs 8,9,10,11,12,13 contested a cause of action against the Plaintiff and sought the Plaintiff should be struck off.

The Plaintiff's application is that the Defendant admitted the claim as outlined in the Plaintiff as follows;

a. On 24th May 2017, the Defendant paid the Plaintiff Ksh 9,617,931/- part payment of the outstanding debt and on 15th May 2018 the Defendant paid Ksh 19,617,931/-

b. The Plaintiff's demand letter of 5th May, 2017 was replied by the Defendant vide the letter of 22nd June 2018 on Defendant's letterhead by Mr. Gregory S. Mwangongo County Executive Committee Member, Finance & Economic Planning. The Letter reads in part;

We acknowledge receipt of your letter dated 5th May 2017 whose contents have been duly noted. The delay in payment of the debt owed to your client is regretted and was occasioned by financial constraints the County has been going through. We are making arrangements to clear the debt in 4 monthly instalments effective end of June 2017. We urge you to prevail upon your client to grant us indulgence as we endeavor to settle this debt.

From the celebrated case of *Choitram supra*; admissions can be express or implied [either] on the pleadings or otherwise e.g. correspondence. The import of the above outlined letter is plain and obvious on its face, and unambiguous that the Defendant owes money to the Plaintiff from sale of motor vehicles. The Defendant in the said letter of 22nd June 2018 admitted the debt arising out of (as referenced). The Supply and Delivery of Motor Vehicles by General Motors East Africa –Ksh 98,532,000.02/-. No fault was attributed to the Plaintiff or contest that there was no contract, or delivery of contracted motor vehicles or that they were deficient in any way. Part payment was made without contesting the validity of the contract.

Later, the Defendant in its defense denied everything in the Plaintiff, from the contract, purchasing, delivery of motor vehicles and resulting debt, yet at the same time was defraying the debt through part payment.

The Defendant contested authorship and authenticity of the letter above as the Plaintiff's letter of demand of 5th May, 2017 was to the Governor of Nairobi City County Government and was not replied by him but an officer of the Defendant. In the absence of claim of forgery/fraud of letter dated 22nd August 2018, the Plaintiff cannot be held responsible for authorship of the letter as it is not involved in the internal processes and procedures of the Defendant.

This Court takes Judicial Notice [**Section 60 (f) Evidence Act**] that following General Elections of 2017 the leadership and management of the Nairobi County government changed; the new team took over from the team that served its term. Naturally, it is possible that part /team that contracted with the Defendant may have left office and the incoming team did not actually/directly contract with the Defendant. The Defendant as the custodian of documents in relation to the 'alleged' transaction, records of the workforce could verify the claim. Secondly, the Defendant remained as Nairobi County Government, any acts/omissions by its Officers/employees carried out lawfully in the course of their duties, the County Government is bound by their lawful action.

The Plaintiff is not privy as to Internal deployment arrangements and processes of the Defendant and /or conduct procedures of procurement, finance and legal departments of the Defendant. The Plaintiff on production of documents issued by the Defendant (LPOs) on Defendant's Letterhead, with full names of Procurement Officer Head of Supply Chain & Chief Officer Finance of the Defendant; their signatures and dates on the LPO's, the Delivery Notes all signed and dated with names of Chief Mechanical Engineer Nairobi City County and stamp of Nairobi City County confirms validity of these documents. The Plaintiff cannot be held responsible for the Defendant's internal arrangement; who is to receive correspondence, advice and/or reply to the same to 3rd parties.

The Defendant contested the amount sought as the Plaintiff claimed Ksh 98,532,000.02 and the Application sought Ksh 69,296,138/- It is upon the Plaintiff to prove the claim, how much the Defendant owes and how much was paid and therefore the letter of 22nd June 2017 cannot amount to an admission.

The letter of 22nd June 2017 has Reference: **The Supply and Delivery of Motor Vehicles by General Motors East Africa –Ksh 98,532,000.02/-**.

Contrary to the Defendant's assertion, the letter outlines the subject-matter and amount claimed.

The Notice of Motion seeking judgment on admission, Paragraph 1 (a) sets out the claim of **Ksh 98,532,000.02/-** at paragraph 1(g) confirms part payment of **Ksh 29,235,138/-** leaving a balance of **Ksh 69,296,138/-**. The Plaintiff relied on the letter dated 22nd June 2017 whose reference clearly outlines the subject and the claim and the Plaintiff's application explains the different figures, arrived at due to part payment made by the Defendant.

As per the Court record, on 10th July 2019, the Plaintiff through Counsel informed this Court that the Defendant wrote to them to reconcile Accounts and the Plaintiff complied and supplied the reconciled accounts. The Defendant through Counsel informed this Court that parties were undertaking reconciliation of Accounts. The Court adjourned the matter and granted parties 45 days to do so. The Plaintiff at Pg 7 of submissions makes reference to reconciled Accounts marked **AM-7** annexed to Plaintiff's affidavit of 1st October 2019. The Plaintiff annexed the letter of 18th July 2019 to the Defendant's advocate confirming and enclosing reconciled accounts. The Defendant did not contest the reconciled accounts.

The Defendant vide the Replying Affidavit of 15th October 2019, raised the following issues;

That the Plaintiff failed to disclose to the Court that they impounded the motor vehicles supplied to the Defendant making payment of purchase price impossible.

The Plaintiff deposed in Further Affidavit filed on 2nd December 2019, and confirmed that 2 of the 11 vehicles were taken for service to the Plaintiff in 2017 and due to non-payment of purchase price were detained. After Further assurances by the Defendant's Committee on Finalization of Pending Bills, the Defendant released the said vehicles in May & June 2019 as confirmed by copies of Plaintiff's Security Gate Passes marked **AM-1** to the Further Affidavit.

Annexed to the Notice of Motion is annexure **AM-7** is the letter dated 6th November 2018, on Defendant's letterhead from Committee on Finalization of Pending Bills & Audit of Procurement Process signed by Chairman Prof PLO Lumumba and it reads;

“We refer to your letter dated 24th January 2018. We confirm that the Pending Bills Committee at its meeting held on 6th November 2018 unanimously determined that your claim is payable.”

The Defendant argued that the instant application is *res judicata* as the Plaintiff made the same application, the Plaintiff relied on the same grounds which was heard and determined,

Section 7 Civil Procedure Act on Res judicata provides;

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

The Court record confirms that Plaintiff filed the application, Notice of Motion of 8th November 2017 and sought to strike out the Defendant's defense. Hon. L.J.R. Ngetich delivered Ruling on 18th October 2018, that the Defense would not be struck off and the matter proceeds for hearing.

The suit has not been heard yet and the issue in the application was striking out the Defence under **Order 2 Rule 15 (1) (b) & (c) CPR 2010** whereas the instant application is brought under **Order 13 Rule 2 CPR 2010** and they are not the same issue. Therefore, the matter is not *res judicata*.

The Plaintiff attached letters to the Defendant dated 7th May 2019, 23rd April 2019 & 11th February 2019 Copies are in the Court file, all enquiring into filing and service of Witness Statements & List of Documents and attendance of /to Pre Trial Directions and the Defendant preferred no response or explanation. Therefore, **Article 48 & 50 COK 2010** provide for every party access to justice and right to fair hearing, pursuant to the Court's Ruling of 18th October 2018 the Defendant failed to exercise their rights hence the instant application. The Defendant is not desirous to expedite hearing and determination of the dispute even after the opportunity was granted and was invited for Pre Trial process.

The Defendant in addition to earlier submissions added the case of ***Chamken Book Shop Ltd vs Board of Management Dedan Kimathi High School H.C. C.A. No 7 of 2016*** in which the Court relied on **Sections 24 & 61 of the Evidence Act** which provides;

24. Effect of admissions

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

61. Facts admitted in civil proceedings

No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing, or which before the hearing they agree, by writing under their hands, to admit, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may in its discretion require the facts admitted to be proved otherwise than by such admissions.

Section 24 of the Evidence Act relates to the effect of a confirmed admission and not the process or procedure of determining if there is an admission under **Order 13 Rule 2 CPR 2010**. **Section 61 of the Evidence Act** applies to whether facts ought to be proved in the conduct of civil proceedings. In instances where parties have admitted facts at the hearing or in writing agreed on admitted facts or by law deemed to be admitted facts based on their pleadings, there will be exemption from proving these facts in the proceedings.

The circumstances of the cited case are that the pleadings did not contain an admission. With regard to the letter of 12th November 2012, the Court's view was that on its own it did not constitute an admission. The Store Keeper's evidence was unreliable as delivery of goods was not confirmed by delivery Notes. So on re-evaluation of the Trial Court's record the appeal was dismissed as there was no admission on the grounds above.

In the instant matter **Section 24 & 61 of the Evidence Act** are not applicable at this stage as the application is one brought under **Order 13 Rule 2 CPR** and not hearing of the suit. In the instant case, the Plaintiff attached delivery Notes signed by the Defendant's officers. Therefore, the case is not applicable.

This Court's analysis of pleadings and evaluation by Counsel on behalf of parties disclose that the Plaintiff has established a plain and

obvious case of admission of indebtedness to the Plaintiff by the Defendant for vehicles purchased delivered and retained and not fully paid for.

The Defendant's defence is denial of each and every claim by the Plaintiff yet the same claim is admitted and is evidenced by the Defendant's other pleadings. The Defendant denied delivery of vehicles by Defendant in the Defence yet in its Replying Affidavit admits delivery by asserting the Plaintiff impounded the vehicles. The Plaintiff could only impound vehicles after delivery to the Defendant

The Defendant wrote to the Plaintiff to reconcile accounts which was done, and no contention was raised.

The Defendant alleged the Form of Contract was not signed and could not form the basis of litigation. The Form of Contract Agreement annexed is an Agreement related to 1 saloon car for Environment & Forestry Sector

and the Agreement includes;

“the following documents to form and be read and construed as part of the Agreement; the Tender Document Schedules in Bidders instruction general terms & Conditions of Contract, specifications and Quantities.”

The Contract would be complete with the listed documents normally held by Procuring Entity – Defendant.

The totality of the facts/evidence on record the Court finds there is no triable issue to go to Trial.

In the case of *Margaret Njeri Mbugua vs Kirk Mweya Nyaga [2016] eKLR* Court of Appeal held;

“Applying all the principles stated in the above quoted cases to this appeal we are of the view that the Trial Court was right in striking out the Defence. The Plaintiff contained details of the transaction that took place, however, the Respondent rather than giving a fair and substantial answer gave a general denial of facts.....”

The Defendant's Defence consists of denial of all claims made by the Plaintiff despite attached documents and correspondence emanating from the Defendant. Despite the Plaintiff's reconciliation of accounts depicting Defendant's part payment of the debt, the Defendant continues to contest the whole claim.

DISPOSITION

The Court grants the Applicant's application filed on 3rd October 2019 on judgment on admission in the following terms;

- 1. Judgment on admission is entered for the Plaintiff against the Defendant for the outstanding amount of Ksh 69,296,138/- with interest at Court rates and Costs.**
- 2. Interest at prevailing bank rates from due date until payment in full of the outstanding amount was/is not admitted and is not granted and may be subject of trial.**
- 3. General Damages for breach of Contract are not recoverable as they are quantifiable. The alleged general damages must be specifically pleaded and proved. Since it is not admitted by Defendant it may proceed for hearing and determination at trial.**
- 4. Due to Corvid 19 pandemic quarantine and ongoing Court vacation, stay of execution is granted for 60 days from the date of delivery of the Ruling.**

DELIVERED SIGNED & DATED IN OPEN COURT ON 17TH AUGUST 2020 (VIDEO CONFERENCE)

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF;

KEMBOY & LAW ADVOCATES FOR THE PLAINTIFF – N/A

MOMANYI & ASSOCIATES ADVOCATES FOR DEFENDANT- N/A

COURT

ASSISTANT

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TUPET