



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

CIVIL SUIT NO. 492 OF 2006

NATIONAL OIL CORPORATION OF KENYA.....PLAINTIFF

VERSUS

GEORGE NDERITU T/A MWIRERI FILING STATION...DEFENDANT

RULING

1. Before the court is an application by the plaintiff, dated 25th April 2016. It is an application for Judgement on Admission.
2. The plaintiff's suit was for Kshs. 6,170,350, being the value of the petroleum products which the plaintiff had sold to the defendant.
3. The plaintiff's case was that the defendant had issued cheques, which were intended to pay for the petroleum products. However, when the plaintiff presented the cheques for payment, the cheques were dishonoured.
4. After the suit was filed and the defendant was served, the parties held discussions, with a view to finding an amicable resolution.
5. On 11th November 2008 the plaintiff wrote to the defendant, making reference to discussions which had taken place between its Company Secretary, Christopher M'Maiti and the defendant.
6. The plaintiff indicated that it had carried out a reconciliation process, after the defendant had given his comments on the outstanding amounts.
7. On 13th November 2008 the defendant responded to the plaintiff's letter, stating thus;

"I confirm and acknowledge my debt as Kshs. 5,895,472/- due and owing to National Oil Corporation".
8. He proposed to pay-off the debt through the deduction of Kshs. 1/- per litre of fuel supplied.
9. In the light of that letter, the plaintiff has now sought judgement on admission.
10. When the defendant's advocates were served with a Hearing Notice in relation to this application, they received the Notice under protest. The reason for their protest was that the advocates did not have

instructions from the defendant.

11. In my considered view the fact that an advocate had come on the record of court proceedings, on behalf of a client meant that he had been duly instructed.

12. If his client had ceased to give him instructions, the advocate would need to seek leave of the court, to enable him cease acting.

13. As the defendant's advocates were still on record for their client, their contention that they had no instructions from the defendant, was of no consequence.

14. I find that the defendant had made a clear, express and unequivocal admission, in writing, that he owed the plaintiff a sum of Kshs.5, 895,472/-.

15. In the circumstances, I now grant judgement in favour of the plaintiff, against the defendant, for the sum of Kshs. 5,895,472/-.

16. The said sum will attract interest at Court rates from 30th August 2006, when the suit was brought against the defendant.

17. The defendant will also pay to the plaintiff, the costs of the suit, together with the costs of the application dated 25th April 2016.

DATED, SIGNED and DELIVERED at NAIROBI this 20th day of March 2018.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Kotonya for Muthee for the Plaintiff

No appearance for the Defendant.