



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI**

**CIVIL CASE NO.334 OF 2017**

**GENERAL MOTORS EAST AFRICA LIMITED.....PLAINTIFF/APPL**

*VERSUS*

**NAIROBI CITY COUNTY GOVERNMENT.....DEFENDANT/RESP**

**R U L I N G**

This is a ruling on the Defendants' Notice of Motion application dated 8<sup>th</sup> November 2017. It seeks strike out defence dated 10<sup>th</sup> October 2017 and the suit be set down for hearing.

Grounds on the face of the application are that, the Defendant denies ever entering into contract with the Plaintiff for purchase of motor vehicles nor receiving the said motor vehicles to its satisfaction and use.

That vide letter dated 22<sup>nd</sup> June 2017 the Defendant admitted indebtedness and delay in payment to the Plaintiff and requested for more time to clear the debt.

That the Defence is a mere denial and fails to raise triable issues to warrant this Court proceeding to trial.

The application is supported by Affidavit of Anthony Musyoki.

He averred that the Defendant approached the Plaintiff to purchase a number of vehicles, which were delivered as per delivery notes attached. He restated that the Defendant by letter dated 22<sup>nd</sup> June 2017 admitted indebtedness to the Plaintiff and gave explanation for the delay. The said letter is attached to the Supporting Affidavit.

Plaintiffs contend that that the overriding objective of this Court is to facilitate the just, expeditiously, proportionate and affordable resolution of civil disputes before it.

In response, the Defendant filed replying Affidavit sworn by Violet Oyangi the Acting Director, Legal Affairs with the Defendant. He denied the claim that the Defendant wrote a letter to the Plaintiffs Advocate acknowledging the debt. He further raised doubt as to the authenticity of the contract and alleged that the Defendant did not sign it.

Respondent further contend that the letter relied on by the Plaintiff to strike out defence was not among the initial list of documents attached to defence; and no leave was sought before filing the additional document.

Further, that the Court will deliberate on whether the contract annexed to pleadings is valid or void and that the Plaintiff will suffer no prejudice if the suit is fully heard.

Respondent added that delivery notes show that different persons other than the Defendant received the vehicles.

Parties herein filed written submissions restating averments in the Affidavits

**Analysis and determination**

I have considered rival arguments herein. I wish to consider the following issues:-

1. *Whether Defendant admitted indebtedness,*

2. *Whether the Defendant has defence with triable issues.*

On perusal of the Court file, I note that the letter acknowledging the debt was filed on 5<sup>th</sup> December 2017 together with reply to defence; there is no mention of the admission of debt in the Plaintiff's file. If it had been introduced at that stage, the Defendant would have had an opportunity to respond to its contents. The issue of admissions cannot therefore be dealt with conclusively at this stage.

Further upon perusal of the documents attached I am of the view that there are triable issues which require Defendant being given an opportunity to be heard before final determination is made by this Court.

From the foregoing, I find that it would be appropriate to accord the Defendant a hearing.

**FINAL ORDER**

The application herein is hereby dismissed.

Costs in the cause.

**Ruling dated, signed, and delivered at Nairobi this 18th day of October, 2018.**

.....

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF**

CATHERINE: COURT ASSISTANT

**PARTIES ABSENT**