



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION

HCC. NO. 353 OF 2015

KUEHNE & NAGEL LIMITED.....PLAINTIFF

VERSUS

EVEREST ENTERPRISES LIMITED.....DEFENDANT

RULING

1. The Notice of Motion dated 28th January, 2016 is for the following Prayers:-

1. That the Defendant's Statement of Defence dated 6th October 2015 be struck out with costs.
2. That there be judgment for the Plaintiff for the sum of US \$ 314,382.13 plus interest at court rates until payment in full.
3. That in the alternative, there be judgment on admission on the admitted sum of US \$ 314,381.13 plus interest at court rates until payment in full
4. That the cost of this application be borne by the Defendant.

2. As is clear from the Motion, the amount sought by the Plaintiff is for a sum of US.\$ 314,381.13 which allegedly remains owing on account of transport services undertaken by the Plaintiff for the Defendant.

3. That Application was not opposed and in the submissions dated 24th March, 2016 by the Defendant it admits the Debt in full. What the Defendant has done in those submissions, curiously, is to ask the Court to be permitted to pay the decretal amount in 30 equal monthly instalments of US\$ 10,479 beginning 15th September 2016 (a date now passed). The Defendant reasons that there being no decree or Notice to show Cause it is not required to make an application for payment by instalment under Order 21 Rule 12(2) of The Civil Procedure Rules 2010.

4. Order 21 Rule 12(2) of The Civil Procedure Rules provides:-

“(2) After passing of any such decree, the court may on the application of the judgment debtor and with the consent of the decree- holder or without the consent of the decree holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by installments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit”.

Now that the Court will be entering Judgement in favour of the Plaintiff as against the Defendant for the sum of Us.\$ 314,381.13, the Defendant may consider that occasion has arisen for it to move Court, through a formal application, to seek for payment by instalment.

5. For now the Application of 28th January 2016 is hereby allowed as prayed with costs to the Applicant.

Dated, Signed and Delivered in Court at Nairobi this 23rd day of March, 2017.

F. TUIYOTT

JUDGE

PRESENT;

Anyango for Plaintiff

Aboth holding brief for Mereka for Defendant

Alex - Court Clerk