

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

HCCC NO.88 OF 2017

ENCAPSULATED COMMUNICATIONS

AFRICA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

SOULCO KENYA LIMITED..... DEFENDANT/RESPONDENT

R U L I N G

This is a ruling on application dated 15th may 2017 brought under order 13 Rule 2, order 51 Rule 1 of the civil procedure Rules 2010. It seeks judgment on admission be entered in favour of the Plaintiff/Applicant for kshs 15,398,423.95 & in the alternative the defence be struck out in respect of the rest of Plaintiff's claim and judgment be entered for Plaintiff as sought in the plaint.

Grounds on the face of the application are that in defence filed on 25th April 2017 the Defendant has admitted owing the Plaintiff kshs 15,398,423.95.the application is supported the affidavit sworn by David Oliwa the director of the Plaintiff herein. He averred that the Defendant in the defence filed on 25th April admitted owing the Plaintiff kshs 15,398,423.95 and that the amount excluded is kshs 6,000,000 and interest. The Plaintiff prayed that in the alternative judgment be entered for kshs 21,398,423.95.

In response the Defendant filed replying affidavit dated 25th June 2017 sworn by Kris Verspecht the managing director of the Defendant company. He averred that there is no express admission in the defence filed herein and that the Plaintiff is attempting to dispose this matter summarily when it is clear that there are issues that need to be resolved by hearing and cross examination of parties.

I have perused defence herein .The Defendant admitted that the Plaintiff was subcontracted to perform works at senate offices continental house and the total amount due as per record is kshs 15,398,423.95.It is further indicated in the defence that kshs 6,000,000 was paid to Encapsulated Multi- Services Ltd a Company which did the works not completed by Sianking Company. Paragraph 7 of the defence state that the Defendant has not neglected, declined and/or refused to make good the Plaintiffs claim but has made part payment. The Plaintiffs claim in the plaint is for kshs 21,398,423.95.it is evident that the amount that clearly admitted is kshs 15,398,423.95.what is in dispute is kshs 6,000,00.From the foregoing I find it fair and just to enter judgment for the amount that is clearly admitted.

I therefore enter judgment for the Plaintiff against the Defendant for the admitted amount of kshs 15,398,423.95 plus costs and interest.

Dated, Signed and Delivered this 29th day of September 2017

.....

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

.....COURT ASSISTANT

.....COUNSEL FOR PLAINTIFF/APPLICANT

..... COUNSEL FOR DEFENDANT/RESPONDENT