



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

CIVIL SUIT NO. 854 OF 2009

CFC STANBIC BANKAPPLICANT

VERSUS -

JAMES MAINA KABATHA.....RESPONDENT

RULING NO. 2

1. The application by the plaintiff is for Judgement on Admission.
2. The plaintiff asserts that the Defendant has admitted owing the sum of Kshs. 2,482,058/- and interest thereon at the rate of 8.56% per annum, plus Default Interest at the rate of 2.75% per month. The said interest was said to be payable from 21st July 2009, until the whole debt was paid in full.
3. It was the plaintiff's contention that because the Defendant had made an express admission of the sums cited above, the court should immediately grant judgement in favor of the plaintiff, for the said admitted amounts.
4. The foregoing is a summary of the relief claimed in prayer 1 of the application.
5. However, in prayer 2 of the application, the plaintiff indicated that the claim for interest should be left for determination at the full hearing of the case.
6. For the purposes of this Ruling, I will presume that the plaintiff was only seeking judgement on admission for the sum of Kshs. 2,482,058/0; and that it wishes to leave out the claim for interest on that sum.
7. The admission by the Defendant is said to be embodied in a letter dated 21st July 2009. The said letter was addressed to M/s Sichangi & Company Advocates; in answer to the Demand Notice which had asked for Kshs. 3,194,046/-.
8. The relevant part of the letter, which the plaintiff is relying upon, reads as follows;

“Your client advanced me a loan of Kshs. 2,868,686 excluding Kshs. 1,912,458 which I paid as deposit to make a total of Kshs. 4,781,144 which I used to purchase the bus.

That I paid the first four instalments from January to April 2007 before I started experiencing financial crisis due to mechanical condition of the vehicle. That the total sum of money I paid is Kshs. 386,628 which when deducted from the sum I was loaned leaves a balance of Kshs. 2,482,058/-?.

9. Both parties are in agreement that when an admission was plain and obvious, the court would grant judgement on the said admission.
10. The plaintiff cited the case of **CASSAM Vs SACHANIA [1982] KLR 191**, in which it was held

as follows;

“The Judge’s discretion to grant Judgement on admission of fact under the Order is to be exercised only in plain cases, where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to Judgement?.

11. Clearly therefore, the plaintiff appreciates that the admission ought to be clear and unequivocal.
12. Another case which the Plaintiff relied upon is **KENYA COMMERCIAL BANK LIMITED & KCB BANK UGANDA LIMITED Vs SUNTRA INVESTMENT BANK LIMITED Hccc No. 547 of 2012**. In that case Hon. Lady Justice Kamau said;

“It is the conclusion of this court that the Defendant will not be denied his Constitutional right to a fair hearing as the provisions of the Civil Procedure Rules 2010 are clear about when a court ought not to await a full hearing, and that is when an admission is so explicit, express, clear and unequivocal?.

13. A reading of the words quoted from the defendant’s letter dated 21st July 2009, appear to be clear. However, it must be noted that the said quotation constituted only a small portion of the defendant’s letter. I will now set out some other portions of the letter, as follows;

“That when I started experiencing the difficulties I wrote to the bank for refinancing all in vain. This would have enabled me re-organize and have myself financially stable. That I also tried and negotiated with K.B.S, which facts are well known by the Bank as I had several correspondence with the company, which option was also futile.

That as a sign of good gesture, I took the vehicle to K.B.S Garage in Kawangware, which is an open neutral place.

That in the event that the Bank cannot refinance me, I have a very bitter option which I am forced by circumstances to adopt. That I am willing to surrender the bus to the Bank to dispose it at Market Value upon valuation by a recognized valuer.

That I am finally requesting the Bank to waive me the accrued interest charged on humanitarian ground, as I lost a lot of investment and assets during the post election violence.

That the outstanding balance of Kshs. 2,482,058/- should be recovered once we dispose off the bus and the balance given to me. That I am certain that the money we shall get from the sell (sic!) shall be able to pay the above-stated sum excluding the interest which I kindly request the bank to waive.

Thanks in advance for the positive response I anticipate to receive from.

Yours faithfully

(signed)

James Maina Kabatha?.

14. Clearly, the defendant expected the plaintiff to sell-off the bus, if it could not agree to re-finance him. And if the bus were to be sold, the Defendant expected that the plaintiff would not only recover any money due to it, but that there would be some balance available for the Defendant.
15. In the Replying Affidavit the Defendant has demonstrated that the bus was now owned by **JOSEPH WAMBUGU**.
16. It is the contention of the Defendant that the plaintiff sold the bus to the said Joseph Wambugu.
17. The plaintiff contends that issues pertaining to the change of ownership of the bus can be dealt with at the trial.

18. In my considered opinion, the issue of the sale of the bus is so intertwined with the issue concerning the loan which the Plaintiff gave to the Defendant, that the 2 cannot be dealt with separately.
19. I say so because the plaintiff does not deny having taken back the bus, or having sold it to a third party.
20. Whether or not the Defendant had abandoned the bus at the **KBS** Garage in Kawangware; and even if the bus was not in a good state of repair, the Defendant was entitled to a credit for its value.
21. Of course, if Plaintiff incurred expenses in carrying out repairs on the bus, such expenses ought to be borne by the Defendant, provided that the plaintiff can prove that the expenses were reasonable.
22. In a nutshell, the parties would need to go through a process in which the Plaintiff discloses the sums it realized from the sale of the bus, to a credit commensurate to the sale price, less the cost of repairs.
23. In the result, the letter written by the Defendant did not constitute a clear, explicit, express and unequivocal admission of liability. Therefore, the application for judgement on admission is unsuccessful. It is dismissed, with costs to the Defendant.

DATED, SIGNED and DELIVERED at NAIROBI this 28th day of January 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Wangari for the Applicant

Gikenye for Gituhi for the Respondent

Collins Odhiambo – Court clerk.