



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 44 OF 2015

JANE WAMBUI MACHARIA.....PLAINTIFF

- VERSUS -

WAIS CAPITAL LIMITED.....1ST DEFENDANT

JOSEPH KAHORO MUNDIA

T/A UPSTATE KENYA AUCTIONEERS.....2ND DEFENDANT

RULING

1. The application before me was brought by the plaintiff pursuant to the provisions of Order 20 of the Civil Procedure Rules. It is an application seeking orders to compel the 1st Defendant, **WAIS CAPITAL LIMITED**, to provide accounts.
2. It is the plaintiff's contention that she was ready and willing to deposit the whole amount which may be due and payable to the 1st defendant. However, the defendant is alleged to have withheld from the plaintiff, the particulars of the debt.
3. As the 1st defendant was duly served with the application but it failed to file any response to it, I find that the plaintiff's assertions are uncontroverted.
4. Pursuant to Order 20 Rule 1 of the Civil Procedure Rules, the court may make an order for the taking of proper accounts with all necessary inquiries and directions.
5. Obviously, if the defendant was laying claim against the plaintiff, for the repayment of some money which it had disbursed to the plaintiff, it is only fair and just that the defendant should provide the plaintiff with the statement of accounts to enable the plaintiff verify the legitimacy of the claim.
6. On 29th July 2015 Gikonyo J. delivered a Ruling on the plaintiff's application for an injunction. Although the learned Judge declined the application for a permanent injunction at that stage, he went on to state as follows;

“However, given the issues at hand, a request for running accounts on the loan is not unreasonable at this stage. Such is an act or order which can comfortably be sought and issued even at pre-trial conference as part of discovery. Also, there will be no prejudice that will be suffered by the 1st Defendant who claims the loan was disbursed and the plaintiff defaulted on

repayment. Accordingly, I order the 1st Defendant to provide to the plaintiff a running statement of account in respect of the loan herein within 45 days of today”.

7. In effect, the court had already ordered the 1st Defendant to provide the plaintiff with accounts. There is no need for the court to issue a second order to compel the 1st Defendant to provide accounts.

8. If the 1st Defendant continues to defy court orders, the plaintiff may consider seeking consequential orders. But it is not the court’s function to offer advice to any of the parties appearing before it. Therefore, I say no more, about the possible appropriate steps which could now be taken up by the plaintiff.

9. Meanwhile, I decline to issue a second order for the taking of accounts. The costs of the application dated 15th October 2015 shall be in the cause. I so order because although the application was unsuccessful, the 1st Defendant never took any part in it. Secondly, if the said 1st Defendant had failed to provide accounts to the plaintiff as it had been ordered to do, I hold the view that it would be wrong to award him costs.

DATED, SIGNED and DELIVERED at NAIROBI this 18th day of August 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of:

.....for the Plaintiff

.....for the 1st Defendant

.....for the 2nd Defendant

Collins Odhiambo – Court clerk.