



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL DIVISION**  
**HIGH COURT CIVIL CASE NO. 417 OF 2015**

**AHMED ABDULLE NOOR.....APPLICANT**

**VERSUS**

**HEALTHLINK MATCARE LIMITED T/A NAIROBI WOMEN'S HOSPITAL.....RESPONDENT**

**RULING**

1. The application dated 14<sup>th</sup> March, 2016 seeks orders that judgment be entered for the Plaintiff against the Defendant for the admitted sum owing in rent arrears of Kshs.29,302,049.2 and the rest of the Plaintiff's claim proceed for trial.
2. According to the affidavit in support of the application, the Defendant has explicitly admitted having entered into an agreement to lease the suit property from the plaintiff. That the Defendant has also explicitly admitted owing the plaintiff rent arrears.
3. The application is opposed. It is stated in the replying affidavit that the plaintiff's claim is not admitted either in part or in full. The Respondent reiterated the statement of defence and stated that the same raises triable issues which need to be determined at a full trial.
4. That application is brought under Order 13 rule 2 Civil Procedure Rules which states as follows:-

**“Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order,**

**or give such judgment, as the court may think just.”**
5. During the hearing of the application on 17<sup>th</sup> August, 2016, the parties agreed to canvass the application by way of written submissions. The Applicant filed their written submissions but the Respondent's did not file any. I have considered the application, the reply to the same and the submissions filed.
6. The statement of defence dated 29<sup>th</sup> January, 2016 in paragraph No. 6 has admitted paragraph No 3-8 of the plaint. Paragraph No.3 – 8 of the plaint states as follows:

**“3. At all material times the Plaintiff was the registered owner of all that property described as L.R. No.13424 (MN/MSA) situated in Mombasa..**

**4. At all material times the Defendant was a tenant of the Plaintiff on the suit premises.**

**5. By a lease dated 23<sup>rd</sup> January 2013 the Plaintiff and the Defendant entered into an agreement and the Plaintiff agreed to lease the Plaintiff’s property No. 13424 (MN/MSA measuring 27955.6 sq feet.**

**6. That the agreement provided as follows:-**

**i) The rent will be Kshs.1,745,969/= per month exclusive of VAT payable monthly in advance.**

**ii) The Defendant was to pay a deposit of kshss.5,237,928/= being the equivalent of three (3) months’ rent which sum was refundable upon all liabilities being paid up in full.**

**iii) The Defendant was to pay Kshs.10,475,856/= being the equivalent of six (6) months’ rent in advance payable within thirty (30) days from the date of signing the agreement.**

**iv) The term of the lease was for 15 years and the rent was to be increased at the rate of 6% annually after the expiry of the first 3 years.**

**v) The lease was to be terminated immediately in the event that the rent remains unpaid for a period of 14 days from its due date whether or not demanded.**

**7. The plaintiff avers that the Defendant took possession on 1<sup>st</sup> July, 2013 and instructed him to start modifying the premises to suit its user as a hospital.**

**8. The Plaintiff avers that upon taking possession the Defendant paid rent as follows:-**

**a) Nairobi women’s hospital rent arrears**

<b>Rent period</b>	<b>rent due</b>	<b>amount paid</b>	<b>balance</b>
<b>1. July –Dec 2013</b>	<b>12,713,784</b>	<b>12,126,661</b>	<b>587,123.20</b>
<b>2. Jan-Dec 2014</b>	<b>20,951,712</b>	<b>5,342,918</b>	<b>15,608,784</b>
<b>3. Jan-Aug 2015</b>	<b>13,967,808</b>	<b>1,666,666</b>	<b>12,301,142</b>

**TOTAL OUTSTANDING IS = 28,497,049.2**

**1. Jan –December 2014 – 420,000.00**

**2. Jan – November,2015 – 385,000.00**

**Total 805,000.00**

The said paragraphs of the plaint captures the terms of the agreement between the Plaintiff and the Defendant.

7. The statement of defence in paragraph No. 7-13 states as follows

**7. That further expounding the foregoing, the Defendant contends that on 23<sup>rd</sup> March 2015 its senior management had a meeting with the Plaintiff to discuss the way forward regarding**

the property. The Plaintiff agreed to give the Defendant more time for it to find a way out and to clear the outstanding rent in full.

8. That the Defendant later identified a potential investor who declared interest in taking up the property and subsequently pay all the outstanding dues in full; on several occasions the Plaintiff was contacted by the Defendant's Chief Finance Officer and the Chief Executive Officer, Dr. Sam Thenya, to inform him of the developments, but these efforts were in vain.

9. That in yet another instance, the Plaintiff was informed that the Defendant's Chief Executive Officer would be going to the suit property on 10<sup>th</sup> April 2015 to show investors the suit property and the Plaintiff did not respond to the request; on the said day, the Defendant's Chief Executive Officer together with the investors actually visited the suit property and found it locked despite the request to have it opened.

10. That further to the foregoing, the plaintiff and his daughter, one Fardosa Ahmed Abdulle, in the presence of the Defendant's Representatives, to wit, Reuben Waweru the Chief finance Officer, Felix Wanjala the Chief Operating Officer and their Advocate, Thomas Agimba, met on 27<sup>th</sup> June, 2015, wherein a Memorandum of Understanding between the parties herein was prepared, full particulars whereof are well known to him.

11. The salient aspects of the Memorandum of Understanding were;

a. The Tenant's Representatives confirm that the tenant is ready to determine (end) the Lease Agreement dated 23<sup>rd</sup> January, 2013 with regard to the property known as Ocean Plaza (L.R. No 13424/MN.MSA), which property is owned by the Landlord with effect from 1<sup>st</sup> July, 2015.

b. The Tenant's Representatives confirm that the tenant is willing to pay The Landlord Kshs.10,000,000 (Ten million shillings) over a period of 12 months, in equal installments, commencing 30<sup>th</sup> July, 2015..

c. The Landlord and Tenant hereby agree that there shall be no further claim based on the said Kshs.10,000,000 (ten million), specifically with regard to costs, damages and interest, save that in the event that the tenant defaults in its payment, interest shall be levied upon the debt on commercial rates.

d. A formal binding agreement shall be executed by both parties to the said lease within 21 days hereafter.

12. The Defendant subsequently forwarded to the Plaintiff, in under 21 days, a Termination of Lease Agreement, embracing the spirit and tenor of the said Memorandum of Understanding.

13. Without prejudice to the foregoing, the Defendant made two payments in satisfaction of the Memorandum of Understanding, the plaintiff failed to return to the Defendant duly executed copies of the Termination of Lease Agreement, for its further action and record purposes."

8. The aforesaid paragraph No. 7-13 of the statement of defence admits that the defendant was a tenant of the plaintiff and was in rent arrears. In the memorandum of understanding referred to above, the Defendant was willing to pay the defendant the sum of Kshs.10,000,000/= (ten million) in 12 equal monthly installments. The memorandum of understanding was to be reduced into a formal and binding agreement.

In my view, the Defendant has in clear terms admitted owing the plaintiff the sum of Kshs.10,000,000/=

(ten million)

9. The principle applicable in entering judgment on admission is that the admission must be clear and unequivocal. As stated by J.B. Havelock, J in the case of **747 Freighter Conversion LLC v One Jet One Airways Kenya Ltd & 3 Others [2014] eKLR**. While quoting Madan J.A in **Choitram v Nazari [1984] KLR 191:-**

**”admissions have to be plain and obvious as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning.”**

10. There is therefore no point of going to trial in respect of the Kshs.10,000,000/= (ten million) admitted. (see for example **Botanics Kenya Ltd Ensign Food (K) Ltd HCCC No.99 of 2012**)

11. With the foregoing, I enter judgment for the Plaintiff against the Defendant for the sum of Kshs.10,000,000/= (ten million). The rest of the Plaintiff’s claim to go for trial. Costs of the application to the Applicant.

Dated, signed and delivered at Nairobi this 22<sup>nd</sup> day of Nov., 2016

**B.THURANIRA JADEN**

**JUDGE**