



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL SUIT NO 581 OF 2014**  
**ABDULKADIR MOHAMED**

**BARSALINGA & SONS LIMITED.....PLAINTIFF**

**VERSUS**

**VANOIL ENERGY LIMITED.....DEFENDANT**

**RULING**

**INTRODUCTION**

1. The Application before the Court is the Plaintiff's Notice of Motion dated **20<sup>th</sup> March 2015** and filed on **23<sup>rd</sup> March 2015**. It is expressed to be brought under the provisions of **Sections 1A, 1B and 3A** of the **Civil Procedure Act** as well as **Order 13 Rule 2** and **Order 51 Rule 1** of the **Civil Procedure Rules**. The Application sought for the following orders;-
  1. ***THAT judgment on admission be entered for the Plaintiff in the sum of USD 520,025.05 being the Plaintiff's claim and being the amount admitted by the Defendant as specified in the letters dated 17<sup>th</sup> December 2014 made and duly signed by Jeremy Friedlander the Acting Country manager and the (sic) Alfred Otieno- Administration Accounts Manager with the Defendant.***
  2. ***THAT the costs of this application and the suit be provided.***

**PLAINTIFF'S CASE**

2. The application is premised on among other grounds that the Defendant has clearly admitted being indebted to the Plaintiff in the sum of **USD 520,000** in the letters dated **17<sup>th</sup> January 2014**. The application was supported by the Affidavit of Abdullahi M Barsalinga that was sworn on **20<sup>th</sup> March 2015**.
3. The deponent averred that on diverse dates in the year 2013, the Plaintiff provided the Defendant with various services including but not limited to supply of local manpower, water boosters, rent generators, vehicles, and preparation of drilling site and construction of access roads, road maintenance and equipment. He further averred that all the work was undertaken to the Defendant's approval and satisfaction.
4. Subsequently, the Plaintiff served the Defendant with invoices on diverse dates, which were received and approved by the Defendant. Thereafter, the Defendant's licence was cancelled by the

- Government of Kenya as the time period permitted for oil exploration as per the licence had expired. As a result, the Defendant terminated the services of the Plaintiff.
5. The deponent's assertion is that since the said termination, the Defendant has refused or failed to pay it for all the services rendered despite having approved all invoices presented to them. He stated that as at 3<sup>rd</sup> September, 2013 there was an outstanding sum of USD 520,025.05 due and owing by the Defendant to the Plaintiff as a result of the unsettled invoices. It is further his assertion that the said sum is yet to be settled despite numerous letters by the Plaintiff's Advocates to the Defendant requesting them to settle the invoices.
  6. The Plaintiff's case is that by the letters dated 17<sup>th</sup> January, 2014 the Defendant clearly admitted its indebtedness in the sum of USD 520,000. It therefore urged the court to enter judgment on admission against the Defendant.
  7. It is evident that the Defendant did not file any response to the said application, and therefore the same was undisputed. The Defendant has neither entered appearance in this matter nor filed a Defence to the claim against it.

## ANALYSIS

8. Order 13 Rule 2 of the Civil Procedure Rules, 2010 under which the Plaintiff sought for entry of judgment on admission provides 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.”***

9. In its supporting affidavit, the Plaintiff stated that its Advocate wrote a letter to the Defendant on 4<sup>th</sup> September 2013 asking them to pay the outstanding amount. On 17<sup>th</sup> January 2014, the Defendant replied indicating to the Plaintiff that they had written to the Bank regarding the amounts owed to them. In a letter of the same dated and addressed to the Manager of First Community Bank, the Defendant indicated that they had held a meeting with the Plaintiff where they agreed to make an initial payment of USD 200,000 and the balance of USD 320,000 was to be paid in two installments.
10. It was the contents of these letters by the Defendant that the Plaintiff argued was an unequivocal admission of the sum of USD 520,000. This Court has perused the said letters dated 17<sup>th</sup> January 2014 which are annexed to the Plaintiff's application and marked as “AMB 2”. The first letter addressed to the Plaintiff reads as follows in part:-

***“As requested by you, I have written the letter to your bank regarding the settlement of the amounts owing to you...” (Emphasis supplied)***

The 2<sup>nd</sup> letter which was addressed to the Bank read as follows:-

***“We wish to advise that we held a meeting with Barsalinga in our office on 9<sup>th</sup> January 2014, where we agreed to make an initial payment in the region of \$200,000.00 and the balance of 320,000.00 in two installments.” (Emphasis supplied)***

11. In light of the foregoing averments by the Defendant in the letters dated 17<sup>th</sup> January 2014, this Court is in agreement with the Plaintiff that the Defendant's admission of its indebtedness was express, clear and unequivocal. In the cases of **Choitram vs Nazari [1984] KLR** and **Kiprotich vs Gathia & Others [1976-80] 1 KLR 105** the common thread was that the judge's discretion to enter judgment on admission had to be exercised cautiously and only in plain cases where the admission was so clear and unequivocal. This is a perfect example of an admission which is so clear and unequivocal. In the circumstances, the Court is called upon to exercise its discretion in favour of the Plaintiff and by entering judgment on admission against the Defendant.

12. Section 1A of the Civil Procedure Act mandates this court, while exercising its power, to bear in mind the overriding objectives, which is, to facilitate the just, expeditious and affordable resolution of disputes. This is aimed at attaining the efficient disposal of the business of the court. In this case where the Defendant has expressly admitted its indebtedness to the Plaintiff and has not controverted the claim against it, it will be just and efficient for this Court to allow the Plaintiff's application for Judgment on admission.

### **DISPOSITION**

13. Accordingly, having carefully considered the application and the affidavit in support, as well as the Plaintiff's supporting documents the court finds that the Plaintiff's Notice of Motion application dated 20<sup>th</sup> March 2015 and filed on 23<sup>rd</sup> March 2015 is merited and the same is hereby allowed as follows:-

- a. ***Judgment on admission is hereby entered for the Plaintiff against the Defendant in the sum of USD 520,000.00.***
- b. ***Interests thereon at court rates from the date of this ruling until payment in full.***
- c. ***The costs of the application and this suit shall be borne by the Defendant.***

**READ, DELIVERED AND DATED AT NAIROBI**

**THIS 31ST DAY OF JULY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

M/s Kigera for the Plaintiff

No appearance for the Defendant

Teresia – Court Clerk