



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

**CIVIL SUIT NO. 716 OF 2012**

**SUNROSE NURSERIES LIMITED.....PLAINTIFF**

**VERSUS**

**GATOKA LIMITED ..... DEFENDANT**

**RULING**

1. The plaintiff has brought a suit claiming € 240,142.93 from the defendant. The debt is in respect of rose flower plants supplied to the defendant. The defendant denies the claim. The plaintiff has now presented a motion dated 23<sup>rd</sup> September 2013 seeking judgment on admission. The plaintiff states that the defendant has admitted the debt at paragraph 6 of its defence and in a letter dated 3<sup>rd</sup> March 2011. The defendant contests the motion.
2. On 20<sup>th</sup> November 2013, the court directed that the motion be determined on the basis of depositions on record and written submissions of the parties. There are two depositions: the plaintiff's supporting affidavit sworn by Nehemia Abraham on 23<sup>rd</sup> September 2013; and, the defendant's replying affidavit sworn by James Gacheru on 19<sup>th</sup> November 2013. In addition, the defendant has filed grounds of opposition dated 14<sup>th</sup> November 2013. I have considered the pleadings, the depositions and the rival positions taken by the parties.
3. The principles governing an application for judgment on admission are well settled. Order 13 Rule 2 of the Civil Procedure Rules 2010 provides as follows –

*“2. 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”.*

4. To succeed on the application, the admission by the defendant must be unequivocal. It must be plain and obvious. See *Choitram Vs Nazari* [1984] KLR 327. A judgment on admission is within the discretion of the court: it is not a matter of right. While the discretion is unfettered, it must be exercised judicially. *Choitram Vs Nazari* (supra), *Kiprotich Vs Gathua* [1976] KLR 87, *Technistudy Vs Kellano* [1976] 1 WLR 1042, *Ellis Vs Allen* [1914] 1 Ch 909, *Osano & Associates Vs Amref* Nairobi, High Court case 356 of 2006 (unreported).
5. The admission can be in a pleading, correspondence or other document. What is paramount is that the admission has to be unequivocal and clear. It cannot apply where there are serious questions of law or fact to be argued. See *Gilbert Vs Smith* [1876] 2 Ch D 686 at 688 – 689, *Kiprotich Vs Gathua and others* [1976] KLR 87 at 90.

6. Applying those principles to the facts, I find further as follows. Paragraph 6 of the defence confirms receipt of credit notes from the plaintiff *but* only for some of the plants supplied. It is not an unequivocal admission of the special claim for € 240,142.93. Paragraphs 4 and 6 of the affidavit of Nehemia Abraham state as follows:-

*“That in arriving at the total figure of Euros 841,011.65 the plaintiff gave the defendant in good faith credit notes worth a total of Euros 176,257.80 in order to take care of any concerns of the defendant in relation to allegedly infected or unsupplied plants, concerns and allegations which have at all times been denied by the plaintiff. True copies of the credit notes are to be found at pages 17 to 22 of the exhibit. That the defendant failed to pay the amount due as required. The defendant only managed to make payments totaling, the sum of Euros 600,868.72 leaving a balance of Euros 240,142.93. True copies of the payments are reflected in the sales statement at pages 23 to 28 of the exhibit”.*

7. From that deposition, it is evident that the defendant had raised issues with quality of supplied plants and billing for unsupplied plants. I have then studied the letter dated 3<sup>rd</sup> March 2011 from the defendant to the plaintiff. It stated as follows:-

**RE: OUTSTANDING PROPAGATION FEES**

*Following our offer towards the settlement of the outstanding fees.*

*We propose to make payments on a monthly basis until the amount is cleared.*

*Kindly note due to the current nature of business if payments are not executed in the said month it will be paid cumulative the following month.*

*We acknowledge receipt of your credit note of € 26,000.*

*We hope this is acceptable to yourself and thank you for your continued support over the many years of business.*

*Please do not hesitate to contact me.*

*Regards*

*Signed*

*Chris Gacheru*

*General Manager*

8. I am unable to say that the letter is a plain and obvious admission for the claim of € 240,142.93. The letter admits a credit note of € 26,000 only. The letter is an admission of a debt to the plaintiff whose particulars will require to be proved in evidence. I say so because the defendant denies owing the plaintiff the sums claimed. The invoices and statements annexed to the plaintiff's deposition may have been a good basis for a summary judgment application but not for judgment on admission. In a synopsis, I do not find a plain and unequivocal admission by the defendant for the claim of € 240,142.93. It follows as a corollary that there are certain matters pleaded in the defence that are triable. In a word, this is not a suitable and clear case for entry of judgment on admission.

9. For all the above reasons, the plaintiff's notice of motion dated 23<sup>rd</sup> September 2013 is dismissed with costs to the defendant.

It is so ordered.

**DATED, SIGNED and DELIVERED** at **NAIROBI** this 23<sup>rd</sup> day of January 2014.

**GEORGE KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of**

Mr. Karanja Kiarie for the Plaintiff instructed by .....& Company Advocate.

Mr. Amolo & Gacoka for the Defendant instructed by ..... & Company Advocate.

Mr. C. Odhiambo, Court clerk.