



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI COMMERCIAL COURTS COMMERCIAL & TAX DIVISION)
CIVIL SUIT 706 OF 2008
TWIGA MOTORS LIMITED..... PLAINTIFF/RESPONDENT
VERSUS
HON. DALMAS OTIENO ONYANGO..... DEFENDANT/APPLICANT

PRELIMINARY DECREE

Ruling dated 21/10/2009 on application by Notice of Motion dated 27/8/2009 Order XII rule 6 Order XXXV 1 and 2 see 3A Act seeking Orders

1. Judgment on admission be entered for plaintiff for Kshs.12,705,095 as per paragraph 3 of plaint dated 28/11/2008.
2. In alternative judgment be entered for Kshs.12,705.095 on grounds that
 1. Respondent on several occasions admitted owing the sum claimed.
 2. Respondent has no defence to the sum in the promissory note.
 3. The defence is filed with the sole purpose of delaying the payment of the sum claimed.

Supporting affidavit

Leave was given to defend suit on 31/76/2009 .

On 27/8/2009 Notice of Motion was filed by plaintiff seeking orders for judgment.

Supporting affidavit by Director dealing between parties over several years. Applicant gave credit facilities on commercial interest at commercial rates for any sum that was overdue.

On 28/6/2002 SJK I letter admits Kshs.12,705,095

“I regret the delay in payment as discussed since period of 3 months to clear the accounts. Discounting bill for 90 days. Any extra charges will be paid by myself in addition to the principle amount.”

Promissory Note SJK 2 in the said sum was dishonoured. Application to strike the defence was dismissed. See SJK 3 – ruling part liquidation of debt is admission and time starts running from latest date. Debt serviced for 7 years.

Preliminary objection by respondent

Amended plaint was filed on 30/7/2010. In the application the plaint prayed for Kshs.30,834,316/= with interest. However judgment claimed was for Kshs.12,705,095/= the sum admitted being principal sum.

The trial was to proceed in respect of the balance which concerns interest. The court found that

“judgment was given for Kshs.12,703,095 for reason of admission and that there was no defence to the amount.”

“The cost of the application and the sum awarded shall await the trial of the balance of the suit.”

The order is clear the judgment granted and the costs of application was to be executed after the trial of the suit.

This is in keeping with Order XII rule 6 (old Civil Procedure rules) where the court is empowered to pass a decree and judgment in respect to admitted claims pending disposal of the disputed claims.

An application before taxation must be formal. And see **Mondekai Mwaga Nanduma –vs- Prorencia Insurance Co. Ltd Kisumu HCC No.475 of 1993 17/5/1995.**

In the circumstances this court did not order the execution before judgment for remainder of the suit.

Dated and delivered at Nairobi this 24th day of April 2012.

J.N. KHAMINWA

JUDGE

Ms Shaw

I request order that the parties do make the arrangements as to trial within 45 days of today.

Court

Let the parties take pre-trial steps within the next 45 days from today.

J.N. KHAMINWA

JUDGE